

1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF NEW YORK

3 Case No. 13-74303 (AST)

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5 In the Matter of:

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7 PERSONAL COMMUNICATIONS DEVICES, LLC,

8

9 Debtor.

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12 U.S. Bankruptcy Court

13 Long Island Federal Courthouse

14 Central Islip, New York

15

16 September 10, 2013

17 10:11 AM

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21 B E F O R E :

22 HON ALAN S. TRUST

23 U.S. BANKRUPTCY JUDGE

24

25

1 HEARING RE: Adj Motion to (I) Pay Pre-petition Personnel
2 Wages, Salaries, and Other Compensation; (II) Reimburse
3 Pre-petition Personnel Business Expenses; (III) May Payments
4 for Which Pre-petition Payroll Deductions Were Made; (IV)
5 Continue Employee Benefit Programs; (V) Pay Workers
6 Compensation Obligations; and (VI) Pay All Costs and
7 Expenses Incident to the Foregoing filed by Debtor Personal
8 Communications Devices, LLC) [5]
9 Adj from 09/04/13

10
11 HEARING RE: Adj Motion to Authorize/Direct Motion of the
12 Debtors for Interim and Final Orders Authorizing the
13 Debtors to (I) Continue Using Debtors Bank Accounts and
14 Cash Management System, and (II) Honor Certain Prepetition
15 Obligations Related Thereto) Filed by Emanuel C Grillo on
16 behalf of Personal Communications Devices, LLC. [6]

Adj from 08/21/13 09/04/13

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2 HEARING RE: Adj Motion to Sell Property under 363b (Debtors
3 Motion for Entry of Orders: (A)(I) Approving Bidding
4 Procedures Relating to Sale of the Debtors Assets; (II)
5 Approving Bid Protections; (III) Scheduling a Hearing to
6 Consider the Sale; (IV) Approving the Form and Manner of
7 Notice of Sale by Auction; (V) Establishing Procedures for
8 Noticing and Determining Cure Amounts; and (VI) Granting
9 Related Relief; and (B)(I) Approving Asset Purchase
10 Agreement and Authorizing the Sale of Substantially All of
11 the Debtors Assets; (II) Authorizing the Sale of Assets Free
12 and Clear of All Liens, Claims, Encumbrances and Interests;
13 (III) Authorizing the Assumption, Sale and Assignment of
14 Certain Executory Contracts and Unexpired Leases; and (IV)
15 Granting Related Relief) Filed by Emanuel C Grillo on
16 behalf of Personal Communications Devices, LLC. [10]
17 Adj from 09/04/13
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1 HEARING RE: Adj Motion to Authorize/Direct (Motion of the
2 Debtors for Entry of Interim and Final Orders (I)
3 Authorizing, But Not Directing, the Debtors to (A) Maintain
4 and Administer Customer Programs and (B) Honor Related
5 Prepetition Obligations to Customers and (II) Authorizing,
6 But Not Directing, Financial Institutions to Honor All
7 Related Payment Requests) Filed by Emanuel C Grillo on
8 behalf of Personal Communications Devices, LLC. [8]
9 Adj from 08/21/13 09/04/13

11 HEARING RE: Adj Motion to Use Cash Collateral (Motion of
12 Debtors for Interim and Final Orders (A) Authorizing the
13 Debtors to Obtain Postpetition Financing and to Grant
14 Security Interests and Superpriority Administrative Expense
15 Claims Pursuant to 11 U.S.C. 105(a), 364(c) and 364(d); (B)
16 Authorizing the Debtors to Use Cash Collateral; (C)
17 Modifying the Automatic Stay Pursuant to 11 U.S.C. 362; (D)
18 Granting Adequate Protection Pursuant to 11 U.S.C. 361 and
19 363; and (E) Scheduling a Final Hearing Pursuant to
20 Bankruptcy Rule 4001) Filed by Emanuel C Grillo on behalf
21 of Personal Communications Devices, LLC. [4]

22
23 Adj from 08/21/13 09/04/13
24

25 Transcribed by: William Garling

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9 APPEARED TELEPHONICALLY:

10 DAVID H. WANDER

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1 P R O C E E D I N G S

2 THE CLERK: Case number 13-74303, personal
3 communications devices, LLC.

4 THE COURT: I'll take appearances, please, first
5 in the courtroom.

6 MR. CARROLL: Good morning, Your Honor.

7 Schuyler Carroll of Perkins Coie, on behalf of the
8 Official Committee of Unsecured Creditors.

9 And with me this morning, Your Honor, is my
10 partner, Gary Eisenberg.

11 MR. EISENBERG: Good morning, Your Honor.

12 THE COURT: Good morning.

13 Is it Carroll?

14 MR. CARROLL: Yes, Schuyler Carroll.

15 THE COURT: All right.

16 MR. GLERUM: Good morning, Your Honor.

17 I'm Charlie Glerum from Edwards Wildman for J.P.
18 Morgan Chase as administrative agent. I thank the Court for
19 allowing my pro hac vice application before the committee
20 could object to it.

21 With me is Paul Labov.

22 THE COURT: Well, that order isn't final yet,
23 so...

24 (Laughter)

25 MR. DIMINO: Good morning, Judge.

1 Alfred Dimino for the Office of the United States
2 Trustee.

3 MR. SALZBERG: Good morning, Your Honor.

4 Mark Salzberg, Patton Boggs on behalf of the
5 PineBridge entities and I filed a notice of appearance in
6 pro hoc yesterday. I believe the pro hoc is still pending.

7 THE COURT: Thank you.

8 MR. CATALANELLO: Good morning, Your Honor.

9 Gerard Catalanello from the law firm of Duane
10 Morris on behalf of Phillip Christopher.

11 MR. OSWALD: Your Honor, Frank Oswald, Togut,
12 Segal & Segal, co-counsel for the debtors.

13 MR. GOLDBERG: Good morning, Your Honor.

14 Adam Goldberg with Latham & Watkins, on behalf of
15 DLJ Investment Partners.

16 MR. GRILLO: And with apologies to the Court, Your
17 Honor, for our tardy arrival, Emanuel Grillo from Goodwin
18 Procter on behalf of the debtors.

19 With me in the courtroom are my colleagues, Matt
20 Curro and Breck Hancock.

21 MR. WIELEBINSKI: Good morning, Your Honor.

22 Jim Wielebinski with Munsch Hardt. I'm here for
23 Quality One Wireless, stalking horse bidder.

24 MR. ROSEN: Good morning, Your Honor.

25 Adam Rosen, Silverman Acampora, co-counsel to

1 Quality One.

2 THE COURT: All right. And then on the telephone?

3 MR. WANDER: Good morning, Your Honor.

4 David Wander, Davidoff, Hutcher & Citron, counsel
5 for Shine Electronics Company.

6 MR. HARRIS: Marshall S. Harris, general counsel
7 for Quality One Wireless, stalking horse bidder.

8 THE COURT: All right. Mr. Grillo?

9 MR. GRILLO: Yes, thank you, Your Honor.

10 THE CLERK: Please state your name.

11 MR. GRILLO: Yes, again, Emanuel Grillo, G-R-I-L-
12 L-O, from Goodwin Procter, on behalf of the debtors and
13 debtors in possession.

14 Your Honor, we have a number of matters on the
15 calendar today. There's been an agenda that was filed with
16 the Court. That updates everything with respect to the
17 objections that have been filed.

18 What I would like to do, Your Honor, is take some
19 of the administrative matters first and address those and
20 then get to really what are the two substantive matters
21 before the Court, which are the sale motion and the DIP
22 order, if that's okay with Your Honor?

23 THE COURT: That would be fine.

24 MR. GRILLO: Okay. Your Honor, number three on
25 the agenda today was the motion for interim and final orders

1 authorizing debtors to use certain bank accounts and cash
2 management and to honor certain pre-petition obligations
3 related thereto. At the Initial Hearing that we had, an
4 order was filed. Based on the discussions with the United
5 States Trustee, I believe we've resolved any remaining
6 concerns of the United States Trustee and I don't believe
7 there have been any further objections to that order and so
8 we would like to ultimately present our final order to the
9 Court. Okay. Mr. Dimino?

10 MR. DIMINO: Judge, the United States Trustee has
11 no objection.

12 THE COURT: All right. There being no other
13 objection to item three, the Court will authorize on final
14 basis the use of bank accounts, cash management system, et
15 cetera. If you'll submit then a final order?

16 MR. GRILLO: We will, Your Honor.

17 THE COURT: Okay.

18 MR. GRILLO: Your Honor, I inadvertently skipped
19 number two, which is the notice of the motion for the entry
20 of interim and final orders authorizing the debtors to pay
21 pre-petition personnel wages, salary, and other
22 compensation, so reimburse pre-petition personnel business
23 expenses, make payments for which pay roll deductions were
24 made. Employee benefit programs, paid Workers' Comp, and
25 the pay -- the cost and expenses incident to the foregoing.

1 As Your Honor recalled, when we had this motion at
2 the first time at the initial hearings, one issue was raised
3 with respect to the executive officers of the company. We
4 deducted those out of from the order. We subsequently
5 provided the U.S. Trustee with the requested information and
6 I think that issue has been resolved.

7 THE COURT: Mr. Dimino?

8 MR. DIMINO: Judge, the United States Trustee has
9 no objection.

10 MR. GRILLO: So, Your Honor, we'd like to then
11 offer to submit a final order in connection with that motion
12 as well.

13 THE COURT: All right. So the Court will grant
14 the interim -- a final order authorizing the debtor to pay
15 pre-petition wages, et cetera. If you'll submit a final
16 order?

17 MR. GRILLO: Yes, we will.

18 Thank you, Your Honor.

19 Your Honor, item number four on the agenda for
20 today's hearing is the motion of the debtors for entry of
21 interim and final orders authorizing but not directing the
22 debtors to maintain and administer customer programs,
23 honoring certain pre-petition obligations to customers, and
24 authorizing, but not directing financial institutions to
25 honor all rebated payment requests.

1 Your Honor, again, this was something that was
2 originally presented at the first day hearing. We had
3 adjourned that hearing in case something else had arisen.
4 The objection deadline was September 6th and no objection
5 has been filed, and therefore, we would request approval of
6 the final order going forward.

7 THE COURT: Mr. Dimino?

8 MR. DIMINO: Judge, similarly, the United States
9 Trustee has no objection.

10 THE COURT: All right. The Court will then
11 authorize on a final basis, maintenance of customer
12 programs, et cetera. If you'll submit a final order?

13 MR. GRILLO: We will.

14 Your Honor, with those matters addressed, we'd
15 like to turn to what we think are the two -- not that
16 they're more substantive or more substantive -- but
17 certainly the two larger issues that are before the Court
18 today, one being the DIP motion and the other being the
19 motion for approval of the sale.

20 We received objections to both of them. With Your
21 Honor's permission, I would like to take the sale motion
22 first because I think the DIP, in part, depends on the sale
23 and the sale schedule and so therefore, we would kind of
24 like to go in that order if Your Honor would be willing to
25 do so?

1 THE COURT: All right.

2

3 MR. GRILLO: Your Honor, as part of the first day
4 motions, as you may recall, the debtors submitted a motion
5 for the entry of an order approving certain bidding
6 procedures relating to the sale of debtors' assets,
7 approving bidding protections for our stalking horse bidder
8 scheduling a hearing to consider the sale and approving the
9 form and manner of notice of the sale by auction and then
10 providing procedures for cure amounts and granting related
11 relief.

12 As Your Honor may recall from that first day
13 hearing, we indicated that the case itself was largely
14 centered on this sale, that this sale was was a culmination
15 of nine months of restructuring and a six-month sale process
16 that was put together by the company over an extended period
17 of time.

18 What we have done is we have also submitted as
19 part of that motion, a declaration of the company's
20 investment banker, David Saperstein of BGSA in support of
21 that -- in support of that motion.

22 Your Honor, we've received two objections to the
23 motion and I'd like to take a moment to address them if I
24 could. The objections that have been received are those
25 from the Official Committee of Unsecured Creditors and the

1 objection of Phillip Christopher.

2 The objections somewhat mirror one another in
3 terms of the substance of the objections themselves. The
4 objections sort of highlight, I guess some sort of typical
5 objections that one would expect to a process like this when
6 we've made efforts to try and work those out with the
7 parties prior to the hearing. I cannot say that we've
8 resolved those issues, so unfortunately, we have to have
9 them addressed in front of the Court. We did speak with the
10 parties and we did ask them to speak with one another, but
11 as of this morning, Your Honor, we had not reached agreement
12 with the committee and with the stalking horse bidder in
13 terms of what the open issues were, so I'd like to highlight
14 those --

15 THE COURT: Are you closer now than you were two
16 days ago?

17 MR. GRILLO: On one or two modest points, Your
18 Honor, I think I would be misrepresenting to say that we
19 were extraordinarily close. I don't know that we are. I
20 don't think that any of the issues probably come as a
21 surprise to the Court. They are issue that typically get
22 raised in this type of context.

23 I can say that the process was, you know, carried
24 out over an extended period of time, pre-petition and coming
25 up with the protections and were the product of a

1 negotiation. We've done our best to inform the committee as
2 to what those issues were. We received document requests
3 from the committee last week. We've done our best to
4 provide answers to those on a rolling basis.

5 I think if we kind of walk through the objections,
6 I think I can provide responses on behalf of some of them
7 and kind of go forward from there, if that makes sense. And
8 I know that stalking horse bidder's counsel is here. We can
9 address some of the other concerns that get raised.

10 We think a lot of them can be dispensed with
11 relatively quickly. I mean, I think there are basically
12 just some choices that have to be made. There's some
13 evidence with regard to the stalking horse bid, that we can
14 admit it as part of the record. We would ask, in the first
15 instance, that Mr. Saperstein's affidavit be admitted as
16 part of the evidence. Mr. Saperstein is in the courtroom
17 and can be cross-examined on the basis of his affidavit if
18 the parties so wish to do so.

19 THE COURT: All right. Let me get to his
20 affidavit then.

21 What is the docket number?

22 MR. GRILLO: I just turned the page -- 47, Your
23 Honor.

24 THE COURT: All right.

25 Mr. Saperstein, would you go up to the left turn

1 where Mr. Grillo. Mr. Saperstein?

2 Just for protocol purposes, what I'm going to do
3 is ask Mr. Saperstein to identify them himself. To ask him
4 if he's familiar with the declaration, if it is, in fact,
5 his testimony in support of the bid procedures motion.

6 Depending on the answers to those, I would then
7 admit the affidavit as his direct testimony. He would then
8 be available for cross-examination to parties who had filed
9 timely objections to the bid procedure motion.

10 Sir, if you would state your name.

11 MR. SAPERSTEIN: David Saperstein.

12 THE COURT: Mr. Grillo, do you want to show him
13 his declaration?

14 MR. GRILLO: Yes, Your Honor.

15 Let the record reflect that I'm placing in front
16 of Mr. Saperstein, a copy of his declaration, which is on
17 file with the United States Bankruptcy Court. This is the
18 declaration filed in support of the motion and I'd ask him
19 to take a look at it and ask if he recognizes it for the
20 record.

21 MR. SAPERSTEIN: Yes, this is my declaration.

22 THE COURT: All right. So do the statements
23 contained in your declaration, ECF docket item 47,
24 constitute testimony that you would give this morning in
25 support of the debtors' bid procedure motion?

1 MR. SAPERSTEIN: Yes.

2 THE COURT: All right.

3 If you will just stand by, Mr. Saperstein.

4 Mechanically, Mr. Grillo, I'll let you go ahead and walk
5 through -- essentially, what are the debtors' responses to
6 the objections. We'll then make Mr. Saperstein available
7 for cross-examination to the committee and Mr. Christopher's
8 counsel.

9 MR. GRILLO: Yes, thank you, Your Honor.

10 THE COURT: You can go back to your seat and we'll
11 get back with you in just a few minutes.

12 MR. SAPERSTEIN: Okay.

13 MR. GRILLO: Your Honor, there are a couple of
14 points that I would like to note up front and these address
15 some of the objections, and I'll ask the parties for some
16 confirmation on it.

17 One of the objections that was raised -- and I'm
18 not taking them in any specific order, but this was an
19 important consideration, and I think it should be addressed
20 first -- was that there was a question regarding the -- what
21 was characterized as a financing contingency in the initial
22 bid.

23 Specifically, Your Honor, as the agreement points
24 out, there -- the two existing junior lenders, affiliates of
25 PineBridge Investments and affiliates of DLJ Investment

1 Partners are effectively taking new notes in exchange or by
2 providing financing for the bid, by taking new notes from
3 Quality One as part of that process.

4 What had to be resolved pursuant to the agreement
5 of the parties and pursuant to the asset purchase agreement,
6 before we went forward with a sales -- excuse me, a bid
7 procedures hearing today -- was that the issues regarding
8 the notes, the guarantee, and the intercreditor issues. And
9 those are two levels, first between the new senior lender
10 for Quality One as a proposed stalking horse bidder, and the
11 two existing lenders, PineBridge and DLJ. An intercreditor
12 had to be worked on that arrangement. The material terms
13 had to be agreed to.

14 And then second, an intercreditor between the two
15 existing lenders, DLJ and PineBridge and their respective
16 affiliates, and that had to be reached as well.

17 So we'll be looking at several sets of documents,
18 and again, there are notes, security agreements, guarantees
19 and intercreditor.

20 And my understanding -- and I've asked the party
21 to be prepared to confirm that this morning -- is that
22 condition to the sale has been reached or it has been
23 satisfied by virtue of the agreement that's been reached
24 among the parties.

25 So with that, I'd like to ask each representative

1 from each of those parties, starting with Quality One to
2 sort of indicate that that's, in fact, been satisfied for
3 the Court.

4 MR. WIELEBINSKI: Thank you, counsel.

5 Your Honor, I think I'd like to turn that over --
6 if I may, to Marshall Harris, the general counsel who's on
7 the line because he's been handling those discussions as
8 late as a few minutes ago or this morning.

9 THE COURT: So is the issue as posed in whether
10 that contingency is being removed from the proposed sale
11 correct? Because there's two different things, one is
12 whether there's an agreement on the underlying terms and the
13 other is whether irrespective of whether there's an
14 agreement on the underlying terms, it's being removed as a
15 contingency in the sale correct.

16 MR. GRILLO: I would characterize, Your Honor,
17 that the condition -- that that condition is being
18 satisfied, is the way that I would look at it, that that
19 condition of the asset purchase agreement be satisfied.

20 MR. WIELEBINSKI: That's my understanding as well,
21 Your Honor.

22 THE COURT: All right. So it's Mr. Harris on the
23 phone?

24 MR. HARRIS: Yes, this is Mr. Harris.

25 THE COURT: All right. So, Mr. Wielebinski, if

1 you want to ask him the question, then?

2 MR. WIELEBINSKI: Mr. Harris, this is Joe
3 Wielebinski. I just want -- I don't know if you followed
4 all of the discussions, but I think the Court wants to hear
5 from us as to whether the conditions regarding the
6 intercreditor agreements with PineBridge and CS has been
7 satisfied.

8 MR. HARRIS: Yes, subject to an agreement on all
9 major issues. The parties are discussing them right now and
10 I can tell you that they are in essence agreeing
11 conceptually as to the solutions to the remaining issues.

12 MR. WIELEBINSKI: Thank you very much.

13 THE COURT: All right.

14 MR. WIELEBINSKI: Any questions, Your Honor?

15 MR. GRILLO: We would also ask for the
16 representatives for PineBridge and for DLJ...

17 MR. SALZBERG: Mark Salzberg, Your Honor, on
18 behalf of PineBridge.

19 I've been advised that all material terms have
20 been agreed to regarding the documents discussed by debtors'
21 counsel.

22 THE COURT: All right.

23 MR. SALZBERG: And this is by PineBridge.

24 THE COURT: Thank you.

25 Then as to DLJ Credit Suisse?

1 MR. GOLDBERG: Your Honor, Adam Goldberg from
2 Latham Watkins, on behalf of DLJ Investment Partners.

3 We've been in active negotiations with Quality One
4 concerning the definitive documents and are awaiting final
5 form.

6 THE COURT: Well, okay as far as that goes.

7 MR. GOLDBERG: I -- I don't have -- that's all I
8 have at the moment. I haven't had a chance to speak with
9 the debtors' counsel before the hearing.

10 THE COURT: All right. Thank you, Mr. Goldberg.

11 MR. GOLDBERG: Thank you, Your Honor.

12 THE COURT: For the record, that's a maybe.

13 (Laughter)

14 MR. GRILLO: We'll ask Mr. Goldberg to check with
15 his colleagues and make sure that they're on board and you
16 can step out to do that.

17 MR. GOLDBERG: I will, Your Honor.

18 THE COURT: Well, on the current state of events,
19 the objections more go to that being a contingency event for
20 the contract that the buyer could walk in the event of, so
21 from the Court's vantage point, that contingency is being
22 removed from the sale contract -- or the proposed sale
23 contract.

24 MR. WIELEBINSKI: Your Honor, I don't think we're
25 in a position to do that at this minute. But based on what

1 I've heard including the maybe, I think if we go a little
2 bit further and go through the other objections, maybe
3 Mr. Goldberg can make a phone call and we can get
4 confirmation. With that, we may be able to either satisfy
5 the Court's concern or the committee's concern. So that's
6 how I would suggest we approach that, if I may have a little
7 bit of time to try and get that ball over the goal line.

8 THE COURT: All right.

9 MR. GRILLO: I think we have plenty to do between
10 now and then, Your Honor, so I don't think the time would be
11 lost.

12 THE COURT: All right.

13 MR. GRILLO: Your Honor, there are a series of
14 objections and again, I will sort of treat them together,
15 both from Mr. Christopher and from the committee, and sort
16 of attack them in the same way.

17 One other note to the adjustments, if you recall
18 the bid deadline that is presently part of the motion was
19 the -- or is the 28th of September. That was a Saturday,
20 Your Honor. We had received requests from a very interested
21 party that on account of religious Orthodox issues that that
22 wasn't a good day and that they had asked if we could carry
23 it forward. We agreed and discussed with the parties
24 carrying the bid forward to the following Monday as the bid
25 deadline.

1 So the bid deadline would no longer be Saturday
2 the 28th, but would be Monday the 30th, assuming, you know,
3 everything else goes forward. So that was the other
4 adjustment that I wanted to make the Court aware of.

5 THE COURT: But there's no -- there's no traction
6 on the committee's request to push the bid request back
7 about 30 days?

8 MR. GRILLO: No, there's not, Your Honor.

9 And we'll -- we've talked about it previously, but
10 we'll kind of go through that again and, you know, part of
11 Mr. Saperstein's declaration, I think, addresses that. And
12 we'll talk about it also from the committee's perspective
13 and what they note too, because I think that's also
14 important. And maybe we'll start with that point.

15 Again, both in the commencement declaration that
16 was introduced on the first day, and then also in the
17 declaration that was provided by Mr. Saperstein. This was
18 not a process that began in connection the bankruptcy, but a
19 process that had gone on for an extended period of time. In
20 Mr. Saperstein's declaration, he identifies how many parties
21 we reached out to as part of this process, both strategic
22 and financial, and the fact that certain parties came
23 forward at various points in time, we entered into a number
24 of confidentiality agreements during that process.

25 The members of the committee being all trade

1 members know as well as anyone what that process was
2 entailing and what it was going on in a current basis. So
3 for example, one of the members of the committee, in fact,
4 actually even participated in that process pre-petition.
5 You know, to the extent of, you know, indicating their
6 interest by executing an NDA and receiving the benefit of
7 the information that was available to it. That wasn't just
8 a current event; that's going back as far as May or June
9 during this process.

10 So we think that there's been a full and a fair
11 process. Effectively, what the process, post-bankruptcy, is
12 intended to do is to pick up, in our view, anyone that we
13 might have missed, and interestingly enough, the party that
14 has been most active during this process since the
15 bankruptcy case was filed is a party -- without disclosing
16 names -- that was not involved the first time around. And
17 for that reason, we've actually picked up someone during
18 this process that we hadn't picked up originally.

19 But I think if asked in cross-examination, I think
20 what Mr. Saperstein would testify to because it's part of
21 his original declaration, is that a number of people have
22 come forward. A number of people have come forward a second
23 time since the bankruptcy. We don't think that there's
24 anyone out there who has not otherwise known or participated
25 in this process from an industry perspective. We can, you

1 know, under confidentiality, we're bound by
2 confidentiality not to disclose all of those names, but
3 we've made those names available to the committee.

4 In fact, more than that, Your Honor, we've taken
5 suggestions from the committee as other people to contact
6 and that's gone on as recently as this week to see if they
7 were interested and that has not -- I'm just confirming with
8 Mr. Saperstein -- that has not led to any additional leads;
9 is that correct?

10 MR. SAPERSTEIN: Nothing substantive yet.

11 MR. GRILLO: Nothing substantive.

12 So, we think, as far as the timing goes, we've had
13 a full and fair process. We've discussed both in the
14 commencement affidavit and the initial presentation that we
15 made, that this company can't afford a much longer extended
16 process. It has had credit contracted on it. It's on a
17 cash, COD basis with all of its vendors. Some vendors, are
18 even, in fact, refusing to ship, notwithstanding the fact
19 that we are paying COD, because they've got issues in
20 connection with the insurers of their receivables.

21 So we're really not at a point where we can keep
22 this company continuing to operate on a post-bankruptcy
23 basis to allow another 30 days. We've spent as much time as
24 we could out of bankruptcy, frankly, to run that process and
25 the hope that we would find someone and be able to identify

1 them. And fortunately, for the debtors, Quality One has
2 spent the time and effort necessary in order to come forward
3 with a bid, but the bottom line is that an extension of 30
4 days, essentially, would kill the company at this point.

5 There's no more trade credit available to it.
6 It's in the process of liquidating assets. It can't make
7 purchases from its vendors because not even the COD isn't
8 enough for some of them at this point in time. The carriers
9 with whom we deal on a regular basis need nothing happen if
10 we're going to continue to get product placement with them
11 on a go-forward basis.

12 So, with respect to the extension for a
13 significant period of time, we also note that that's an
14 element of Mr. Christopher's objection as well.
15 Mr. Christopher knows better than anyone what this company
16 has been there because he's not only the former CEO, but has
17 been in litigation since that time with the company. So to
18 the extent that he is able or someone else is able to come
19 forward with a bid -- we've received a request for an NDA
20 from him over this weekend. We're prepared to serve that up
21 and to have him participate in that process, notwithstanding
22 the existing litigation.

23 But again, he's a knowledgeable party. Everyone
24 who is at the table or present is knowledgeable. We don't
25 think that there's -- the financial buyers have all stepped

1 away at this point. It's not really a financial buyer
2 opportunity, as opposed to a strategic buyer opportunity.
3 We are pleads that we have at least one party at the table.
4 We think we have the opportunity to have potentially one or
5 two more, and hopefully, that will make for a fruitful
6 option.

7 But with respect to the objection for an extension
8 of time, we would ask that that be overruled.

9 Your Honor, the next objection that I'd like to
10 address is the objection related to the break-up fee and the
11 expense reimbursement. There has -- the break-up fee
12 objection is essentially twofold one -- actually, threefold
13 -- one, should it be paid at all; two, what should the
14 amount be; and two, what should the amount be -- or three,
15 rather, what should the amount be based on.

16 So effectively, we have a three-part question. I
17 would like to address the threshold question first, if I
18 may, whether a break-up fee is appropriate. There are some
19 insinuations in the pleadings by the committee that somehow
20 that this is a related party transaction or because there is
21 an existing customer-vendor relationship between Quality One
22 and the debtors, that for some reason, that renders the
23 break-up fee inappropriate.

24 Again, as indicated in both the commencement
25 affidavit and the Saperstein declaration, what we had was a

1 process that ran where we could not get anyone to come to
2 the table. As Your Honor recalls, at the Initial Hearing, I
3 said we not only reached out to third-party buyers, but we
4 also -- even to the people in our own capital structure,
5 including trade vendors, including the junior lenders in our
6 capital structure and could not get them to come forward.
7 It required a lot of work.

8 Why? Because there are two sets of relationships
9 that are critical to the company at this point. You have
10 the vendors on the one hand, the suppliers, most of whom are
11 located overseas. Remember, as we indicated at that first
12 hearing, you have, essentially, what amounts to second and
13 third-Tier suppliers that the company works with. They tend
14 to be based in China, in Korea and Hong Kong. We service as
15 their intermediary here in the United States. What that has
16 meant is a significant amount of effort to get them to
17 continue to sell to whomever bias PCD because PCD has no
18 credit with those entities right now and also has issues
19 with the suppliers, including members of the committee, with
20 respect to reimbursement from their receivable insurers as
21 it stands right now.

22 So that was a set of relationships that required
23 con sense as part of our original LOI to make sure that they
24 were on board with whom our buyer was going to be. We
25 didn't have contracts that we could just walk into

1 bankruptcy and have them assume with the buyout, that
2 basically, if you can show performance and adequate
3 assurance of future performance, that that would just work.
4 No relationships had to be built.

5 Quality One spent a considerable amount of time
6 traveling to China and to Korea -- and certainly
7 Mr. Wielebinski can go to greater lengths than I can to say
8 what was required, but I know that, for example, our CEO,
9 George Appling, went with Quality One to go meet and build
10 those relationships on top of the relationships that Quality
11 One had.

12 So the fact that there was a pre-existing
13 relationship between Quality One on the one hand and PCD on
14 the other, did not mean that there was, A, some sort of, you
15 know, insider deal, that it wasn't a true, arm's length
16 transaction.

17 Obviously, the terms of the transaction, itself,
18 indicate that it's been more than arm's length. So there
19 was that side of the equation, the vendor's side.

20 On the flipside, there's also the carrier side of
21 the equation, as well, and the MSAs that the company has,
22 which are relationships that can be terminated by the
23 carriers, you know, on very short terms. There are -- well,
24 in order to make the business viable for sale, one of the
25 things that had to be worked out were longer term

1 arrangements which meant substantial negotiations by any
2 buyer with respect to the carriers themselves.

3 Quality One has undertaken that task. That
4 consumed a considerable amount -- not just for Quality One,
5 but for the debtors -- of their time and energy as part of
6 that process. So you have a situation where this was not
7 just going to be turnkey operation for a buyer to come in;
8 it was going to require a significant amount of time and
9 energy.

10 Separate and apart from the expense reimbursements
11 that were required as part of that process, Quality One also
12 then went out and retained a banker. Obviously, it retained
13 counsel, who's here in court today. They can talk through
14 what those expenses were, but the bottom line was, this was
15 a significant commitment. It was probably a harder deal to
16 do than most given the nature of the business because you
17 have a significant overseas contingent and, you know, the
18 large carriers on the other hand, you know, to put it
19 bluntly, have not been happy with the PCD situation for some
20 period of time.

21 So if we were ultimately to preserve enterprise
22 value, someone was going to have to come in and put a lot of
23 time and a lot of effort into that process. We think the
24 break-up fee is reflective of that, we think it's necessary
25 to pay under the circumstances. We think the expense

1 reimbursement has probably been exceeded at this point based
2 on my understanding from Mr. Wielebinski.

3 But the bottom line is that we think it's
4 appropriate. We know it's arguably towards the high side of
5 market. I mean I think the committee and Mr. Christopher
6 all point out that there are certainly cases in the two to
7 three percent range. This one is four percent and I would
8 sort of like to get to the calculation in a moment, but the
9 bottom line is that it's four percent based on a contract
10 price of \$105 million dollars.

11 When you talk about all of the assumed liabilities
12 including potential warranty and MDF liabilities, the price
13 can come to as much as \$139 million dollars. It doesn't
14 change as far as -- the break-up fee doesn't change as far
15 as it goes, but obviously it becomes smaller in relation to
16 that number.

17 The working capital adjustment could move down,
18 but the bottom line is it was fixed at a number that, one,
19 measured the effort that was required by Quality One as our
20 bidder, number two, you know, it's consistent with what the
21 overall sale price is, and three, certainly, is not out of
22 line for what is ultimately been proven by the market.

23 But what I'd like to do is ask Mr. Wielebinski if
24 he has something more that he would like to add, in respect
25 to the break-up fee?

1 MR. WIELEBINSKI: If I may, Your Honor, a couple
2 of points.

3 THE COURT: Sure.

4 MR. WIELEBINSKI: One, besides -- there has been a
5 substantial investment by Quality One and I want does exceed
6 the proposed \$1 million dollar expense reimbursement. That
7 includes not just counsel fees, but direct out of pockets
8 including for numerous trips that Quality One's CEO had to
9 take to Asia to go meet with the very critical customers
10 involved in this transaction.

11 And frankly, Your Honor, we think the debtor was
12 benefitted by those trips because until we could show
13 somebody in Asia that PCD had a viable future with somebody
14 that was seriously interested in buying this company, I
15 think Mr. Grillo can testify that the customers in Asia were
16 very concerned with doing any business going forward with
17 PCD. I think that once Quality One stepped in, there's been
18 at least a settling of the angst that's been out there.

19 In addition to my firm, Your Honor, there's also a
20 Mexican firm that we've had to retain because there's a
21 Mexican subsidiary that's part of the assets that are being
22 sold. We've also had to retain an accounting firm that's
23 going to help us do the audit in connection with just
24 monitoring the inventory and verifying what we get at the
25 end of the day.

1 We do have an investment banker and even though
2 the entire fee is not included in those expense
3 reimbursements, there have been out of pocket costs that
4 they've incurred that we're responsible for. I have
5 multiple counsel, Your Honor, which is a necessity in a
6 transaction of this size.

7 So it's not just one law firm that's involved and
8 it's not just a few expenses; it's significant expenses.

9 The other important point, I think, Your Honor, is
10 as I read the case law in this circuit, the justification
11 for the break-up fee has been satisfied. We have come
12 forward with a legitimate offer which will serve as the
13 floor for any ultimate sale, assuming the Court approves
14 that.

15 But more importantly, the other standard is that
16 there's no be taint associated with -- or impropriety
17 associated with the granting of the break-up fee, and while
18 there has been an implication in the objection that there's
19 some sort of relationship there, the only relationship, Your
20 Honor, is that we were a pre-petition customer of the debtor
21 and we continue to be a customer of the debtor, but beyond
22 that, there's been no allegation and there's certainly no
23 facts that demonstrate that there's something untorted or
24 something bad about a transaction with Quality One W.

25 The rest is the reasonableness of the fee which

1 the Court can decide, but I did want to raise that element,
2 Your Honor.

3 THE COURT: But the maximum cash component of the
4 Quality One bid is \$47 million dollars?

5 MR. WIELEBINSKI: Maximum cash component?

6 THE COURT: Cash component.

7 MR. WIELEBINSKI: Absolutely, Your Honor.

8 And I looked in the case law and I'm not aware of
9 a case in this circuit that says you only look at the cash
10 component when you determine what a break-up fee should be.
11 And to us, Your Honor, admittedly, we are taking on an
12 assumption of notes -- actually, we're citing new notes to
13 PineBridge and NCS -- and that's real value to us. I mean
14 we think it's real value to the estate because it removes
15 those liabilities from the estate.

16 But it's not like we're taking on some obligation
17 that doesn't have a serious requirement for payment.
18 There's secured obligations, Your Honor; secured by
19 collateral that, you know, we'd otherwise like to know would
20 be unencumbered, but that's not how the deal was going to
21 work.

22 In addition to that, Your Honor, we are also
23 assuming executory contracts which will have a cure
24 component. Which the committee conveniently has not
25 included in its calculation and in addition to that, Your

1 Honor, there are transactions costs that we're picking up,
2 which include the professionals -- it's somewhat ironic --
3 but we're paying for this fight today if we're the
4 successful purchaser.

5 There's also something called the MDF and the
6 warranty obligations, which we estimate, Your Honor, could
7 be as much as \$10 million dollars and the debtor can confirm
8 that amount because it comes from their books. You know,
9 whether those warranty obligations will actually arise is a
10 different story.

11 But when we add this up, Your Honor, 105 -- \$105
12 million dollars is the base. It can get as high as \$139
13 million dollars, depending on what those obligations --
14 those additional obligations, real obligations, Your Honor,
15 that we have to pick up, are included. And when you look at
16 that high number and you compare it with the break-up fee,
17 you get down to a 3.1 percent of the total value of the
18 transaction.

19 So I don't think it's just a hard 105, that's the
20 number. I think it's dramatically higher than that.

21 THE COURT: How much, if any, of Quality One's
22 money is now at risk? In other words, obviously, the Court
23 would have to approve the sale before Quality One or the
24 buyer would be obligated to close.

25 So assuming that I were to approve the original

1 transaction, which is currently in flux, but if I were to
2 approve the original sale agreement and Quality One chose
3 not to close, how much money would it lose to the estate?

4 MR. WIELEBINSKI: Your Honor --

5 THE COURT: There's some debate about that, as
6 well.

7 MR. WIELEBINSKI: -- can I ask that question of
8 some people behind me that are -- that may know more than I
9 do just to make sure that I come back with the right answer?

10 THE COURT: That would be fine.

11 Because one of the calculus issues, obviously, is
12 what's the cost to walk at this point?

13 MR. WIELEBINSKI: Your Honor, I think from our
14 perspective, the answer is over \$4 million dollars, 2.5 of
15 which is the deposit we put up with the estate that's at
16 risk. But that is money that we've incurred out of pocket,
17 that you ask what's the loss and maybe the question was
18 what's the loss to the estate, but the loss from Q1W
19 perspective is at least that amount.

20 THE COURT: The question was more if I were to
21 approve the sale transaction, and Quality One didn't close,
22 how much does it forfeit, if any?

23 MR. WIELEBINSKI: That's 2.5, Your Honor. That's
24 the deposit amount.

25 MR. GRILLO: It's -- I'll give you a little bit

1 more explanation on it, Your Honor. There's \$2.5 million
2 dollar deposit. There are certain circumstances in which
3 half the deposit goes back, which is the failure to fund
4 condition. That was raised by, I think, both the committee
5 and by Mr. Christopher, and that was a scenario which we
6 were trying to eliminate this morning which is the, you
7 know, which of the financing conditions which people are
8 working on now, as I understand it.

9 But the bottom line is that that was -- otherwise
10 the \$2.5 million is the number, but it's subject under the
11 failure to fund condition.

12 MR. WIELEBINSKI: That's correct, Your Honor.

13 Thanks for that clarification, counsel.

14 Your Honor, the other point, I guess, Mr. Grillo
15 invited me to come up and just raise a few issues on the
16 issues he discussed. With respect to timing, every case
17 that I've been involved in, no matter what side you're in,
18 with respect to a sale, there's always a request for more
19 time because it's axiomatic that particularly if you're a
20 bidder that more time is better.

21 But in this case, Your Honor, it doesn't mean that
22 you get the time, it's just that -- certainly, if we all had
23 more time to do things, it would be ideal.

24 That's just not our taking a negotiating position.
25 From our perspective, Your Honor, timing was one of the most

1 critical and I would say the most paramount factor that was
2 associated with our negotiations, price and timing, and
3 we've already given up on timing a few times already in this
4 case.

5 We gave up on it, Your Honor, when you told us
6 that you originally thought the hearing could be on October
7 16th and then you came back at my request and moved it back
8 to the 10th, because that was already beyond the deadlines
9 established in the APA for a sale hearing.

10 In addition, we gave the committee a six-day
11 extension just to file their objections.

12 Any additional extension, Your Honor, to us, is
13 fundamental enough, substantive enough that I will tell the
14 Court that in talking with our CEO -- we certainly have to
15 see what changes the Court makes -- but the timing is so
16 paramount that that is an issue that I'm not convinced that
17 Q1W will remain committed or can remain committed if that's
18 adjusted.

19 And part of the reason, Your Honor, is just simply
20 that we're coming into Q 4 of the year; it's an important
21 time period. We're already eating into that and that's when
22 a large portion of the sales are expected to be made. If we
23 lose that opportunity, if we move this back, certainly the
24 30 days or the 60 days that have been suggested, but even if
25 we move it back 30 days, Your Honor, it makes a huge

1 difference for us.

2 The other thing is understand that Q1W is a
3 relatively small company. It has committed for the last and
4 a half months it's entire seen your executive group to this
5 transaction. They're spending 24/7 on this, Your Honor.

6 If there was an opportunity cost -- because they
7 can't do anything else but continue to focus on this, and
8 they have to. They don't have a large team, a large
9 executive group that can be broken down and a few of them
10 work on this transaction. It's the CEO, the general
11 counsel, the CFO, and all of their staff that are involved
12 in this on an absolute daily basis.

13 And they need to know that they're either going to
14 have an opportunity to buy this -- they know that other
15 bidders can come in, they know that there may be an auction
16 -- but they need to know that they're either going to
17 acquire this in the process or they're not and they can move
18 on to something else, and that's very important, Your Honor.

19 Those are, I think, my only comments on those
20 points. Thank you very much.

21 THE COURT: All right. Thank you,
22 Mr. Wielebinski.

23 MR. GRILLO: Your Honor, I just wanted to make one
24 point about the objection that was raised with respect to
25 the cash component versus the DIP financing.

1 Where Quality One got its financing from is not as
2 relevant for purposes -- and as Mr. Wielebinski pointed out
3 -- we didn't find any case law on this either, but the
4 bottom line is they have effectively have gone to our
5 existing lenders what have agreed to provide them financing.
6 So the bottom line is to the extent that they are assuming
7 those obligations as part of the bid -- that's part of the
8 consideration. It doesn't fade away or it doesn't matter --
9 they're going to their own lender to get the front part of
10 the financing. They would have to go to some other lender,
11 if it weren't this group of lenders, to get financing to pay
12 for it.

13 The fact that the financing is provided by
14 somebody who's already in the capital structure doesn't mean
15 that it makes the bid any less valuable. Somebody else who
16 comes in still has to pay what the existing bid is.

17 THE COURT: So wouldn't that be more equalized if
18 DLJ Credit Suisse said that they would provide that same
19 assumptive financing to any other qualified bidder in the
20 process, which I'm not expecting that they're not going to
21 say. In other words, the playing field already at the
22 moment is \$47 million -- up to \$47 million cash, plus \$65
23 million or so in assumed debt versus an all-cash bid with a
24 break-up fee and expense reimbursement on top.

25 MR. GRILLO: Respectfully, Your Honor, I don't

1 know that I entirely agree with the analysis. Only because
2 the bottom line is it's aggregate consideration. The fact
3 you've got two secured lenders who are already in the deal,
4 who are providing the financing means that that financing
5 would have to come from somewhere. Okay. The fact that for
6 this particular borrower, because they spent four months as
7 part of those negotiations with them, that they are willing
8 to provide the financing.

9 One, it doesn't require them to provide staple
10 financing, in effect, for everyone. You know, the first
11 rule is: know thy borrower, right? I mean that's the first
12 rule of lending at the end of the day.

13 So the bottom line is if they couldn't get it from
14 this group, then Quality One would have had to have gone
15 elsewhere. This was the deal that, you know, worked out
16 under the circumstances. So if someone else comes in and
17 bids, they have to come in with whatever Your Honor approves
18 in terms of the break-up fee, but whatever that ultimate
19 minimum overbid is, then they have come with it.

20 The Estate has gotten the benefit of that. The
21 fact that there's the same party providing the financing is
22 to some degree irrelevant because the aggregate
23 consideration is what it is. So as far as the fact that
24 it's 105 that it's based on -- we'll use that number for the
25 moment -- and it could (indiscernible), and that's what it -

1 - you know, the assumption of the other liabilities, we
2 didn't really compute that in, but if you do compute that
3 in, it brings the number down further. Some of that is
4 contingent, so, obviously, it becomes a little fluffier
5 depending -- and it's not as hard a number as the 105 is
6 today and the other assumption of those -- the cure costs,
7 excuse me, of the agreements that are, in fact, decided.

8 But financing is financing. You know, the dollar
9 is fungible. Where they come from should not matter, and
10 effectively, what the committee and Mr. Christopher's
11 objection is, well, you have to think about where it comes
12 from. They don't offer any precedent for that. They cite,
13 you know, integrated resources, which we all know for
14 twenty-plus years now, as a standard, it doesn't change the
15 equation as far as that goes.

16 So we think, based on that, we think that
17 objection should be -- to the extent that it's pursued, that
18 it should be overruled as well.

19 Sort of moving ahead, Your Honor, the next --
20 we've talked about the break-up fee and the expense
21 reimbursement. We've talked about the timing that's
22 requested. You know, there's an allegation that's made on
23 page 14 of the committee's objection that there should be --
24 the debtors should be required to actively market their
25 assets post-petition.

1 Mr. Saperstein has put in his declaration -- and
2 we are still actively marketing. No was has stopped
3 actively marketing. I indicated in my opening comments that
4 we took the names that were provided to us by the financial
5 advisors to the committee to reach out to them, too.

6 We have not -- to be perfectly clear,
7 unequivocally, I can ask any of the debtors' representatives
8 who are here, no one has stopped marketing. We have taken
9 meetings just this week with a potential bidder with the
10 management team this past week, you know, somebody who we
11 expect will be part of the process. We are hoping that they
12 will be a part of that process, but there's been no basis to
13 make any sort of allegation or assumption that we are not
14 continuing to actively market.

15 We have a deal and we're very pleased with that
16 deal, but the bottom line is if a better one comes along,
17 the debtor understands perfectly well what his fiduciary
18 duties are. And in fact, one of the issues that were raised
19 by the committee, which we -- we were certain -- we
20 indicated we weren't prepared to consent to is to fold them
21 into the process.

22 So one of the question that was raised was
23 approvals and consents and anything like that that we get,
24 we are prepared to share with them. We are prepared to run
25 any decision that needs to be made by them in the event that

1 we do get a competing bid, we expect to be -- the debtors
2 expect to be working with both the senior lenders, although
3 it might be a little bit academic since they are, you know,
4 the cash portion gets taken care of either way -- but
5 certainly with the committee, to make sure that we have both
6 the highest and best bid as part of that process.

7 So with respect to their concern that their
8 involvement is necessary to ensure a fair sale process, we
9 fully agree. So I don't think that we have any issue as far
10 as that goes.

11 There's a couple of other minor points -- I
12 shouldn't characterize them as minor -- with respect to
13 contracts that were raised, making sure that everyone has
14 the same time to both designate or to use a word, de-
15 designate contracts. That should be equal all the way
16 around. As far as that goes, I don't think that anyone has
17 an issue with that.

18 And again, in approving initial bids, we expect to
19 pull the committee in on everything with return --
20 determining who the qualified bids are. You know, we're
21 prepared to amend the order to include that.

22 We've talked about the liquidated damages. We've
23 talked about the -- we didn't talk about yet, the
24 requirements for a qualified bid.

25 We did talk about the assumption of the contracts.

1 We're certainly -- and if for some reason the
2 auction needs to be postponed or cancelled for whatever
3 reason, we certainly intend to take that up with the
4 committee as well.

5 THE COURT: There's an issue about a virtual data
6 room; is that still in controversy?

7 MR. GRILLO: We have the virtual data room. I
8 don't believe that there's a controversy about that. We
9 have access to -- we have gives access to everyone who's
10 asked for it.

11 We've also been -- you know, one of the concerns
12 that was raised early on by a potential bidder was making
13 sure that it was updated to include materials that may be
14 Quality One had reviewed when it was with the company.

15 Separate and apart from all that was in the data
16 room, we've endeavored to make sure that anything that was
17 reviewed in any on-site visit was made part of the data room
18 as well.

19 Your Honor, I think with that, I hit all of the
20 points from both objections. Certainly, reserving the right
21 to respond to whatever the committee or Mr. Christopher
22 would like to sort of add.

23 I don't know if there's anything else that
24 Mr. Wielebinski wanted to add before we turn it over, but
25 with that, I think we've prepared to seat the podium.

1 THE COURT: All right. Very well. Thank you.

2 Mr. Grillo, if you want to address, just in terms
3 of highlight the committee's remaining objections. It
4 sounds like some have been resolved either before this
5 morning or this morning and then I'll leave you the
6 opportunity to cross-examine Mr. Saperstein.

7 MR. CARROLL: Very well, Your Honor, and I thank
8 you.

9 And for the record, Schuyler Carroll of Perkins
10 Coie on behalf of the question.

11 Your Honor, just briefly, I think to summarize
12 what has been agreed, Mr. Grillo gave you most of the
13 detail, it is primarily the types of things that are between
14 the committee and the debtor, such as consultation rights
15 between the committee and the debtor.

16 But what is still left outstanding are the things
17 that really are in control of Quality One, and I'll go
18 through that, Your Honor. First, Your Honor, it is our goal
19 here, solely, to ensure that we create a level playing field
20 and create a process that will maximize the value and
21 maximize competitive bidding. And unfortunately, what we
22 have right now is a process that does not do that.

23 The first item, Your Honor, that we believe is
24 important to that is the timing. And I think if we listen
25 to what Mr. Wielebinski told us, Your Honor will see that

1 it's clear that we do not have a level playing field.

2 We now have, Your Honor, on October 30th, which is
3 less than a month from now, as the bid deadline. And what
4 Mr. Wielebinski told us is that for more than two and a half
5 months, his client has been working 24/7 on this deal.

6 Your Honor, there's obviously a big difference
7 between someone who's been in here for two and a half months
8 working 24/7 and somebody who is new for the table, and
9 Mr. Grillo told us that there is at least one party who is
10 brand new to the table and didn't even know about this until
11 after the bankruptcy filing.

12 So we're not talking about somebody who is
13 speculative, who is not really out there -- or excuse me --
14 who has been out there for a significant period of time, and
15 I can tell Your Honor that I have spoken to counsel to that
16 bidder and our financial advisors have spoken to their
17 financial advisors and they specifically said to us, look,
18 it's a very difficult time. As Mr. Grillo pointed out, they
19 are Orthodox and this is the most busy season of holidays,
20 as it were, a couple of days last week, a day this week, two
21 more the week after coming up after that, that will take
22 them out of pocket significantly.

23 And I raise that, Your Honor, because when we
24 spoke to -- or really when our financial advisors spoke to
25 their financial advisors last week, they specifically told

1 us that client directed them not even to work on those
2 holidays. So it's not the type of thing where we can just
3 have someone else from the firm handle it; it is a
4 significant difference.

5 And again, Your Honor, it goes to the real point
6 of we have a real bidder who, I think everyone will
7 acknowledge, has the wherewithal and has the motivation to
8 make a bid, who is saying they need more time. We can go
9 into -- and I'd like to go into a little bit later, Your
10 Honor, why we don't think this is such a melting iceberg
11 that requires a rush to a sale.

12 But in short, we believe that if you look at the
13 cash flow and we now have the benefit of a couple of weeks
14 of actual operations, Your Honor. If you look at those Your
15 Honor will see that the cash flow will allow us to operate
16 for a significantly longer period, but we're not asking for
17 that, Your Honor. What we think is appropriate is just a
18 few more weeks, not off in months and months and into next
19 year.

20 Your Honor, Mr. Wielebinski said something else
21 also that I think is important and he talked about the
22 relationships that his client thought were important to
23 establish. Well, Your Honor, that goes for any other bidder
24 as well. They're going to need to have those same
25 conversations with vendors, with carriers and with other

1 parties.

2 Your Honor, with respect to the specific timing
3 here, there are two parts to it, as I understand it, Your
4 Honor. There are the deadlines that Quality One has set out
5 and demanded and there then there's a -- what I'll refer to
6 as a third-party deadline -- that we, in this courtroom,
7 cannot control, and that is we understand that their lender
8 has given them a commitment letter that expires sometime
9 towards the end of October, and Your Honor, if we said,
10 well, we understand that we can't go this out into forever,
11 but perhaps we can back up to that deadline. Maybe that's a
12 good way that we could compromise and preserve everyone's
13 rights here and still ensure a level playing field that will
14 allow other parties to come in.

15 Your Honor picked up on another important point
16 that I think plays to, both the timing and -- what I'll
17 discuss next -- the break-up fee, and that is the
18 contingencies, Your Honor. We talked about one of them, and
19 as you so accurately pointed out, we have a maybe. If
20 Quality One were so comfortable that this would be resolved
21 today or sometime in the near future, they could have made
22 it simple; they could have just stood up and said, Your
23 Honor, we've waived that condition, but they didn't.

24 And even if Mr. Goldberg reports back that his
25 client is -- we're Quality One, and the first lien -- excuse

1 me, and PineBridge are, which is essentially, we have the
2 substantial terms, we're working on it. That's still not
3 done. Quality One can, for any reason, simply come back and
4 say, you know what, we don't like the terms. We're not
5 going to agree to them. There's no signed document, and
6 that's a condition that's in their sole control; it's their
7 discretion. It's not capable of us coming back and saying,
8 well, Your Honor, all the other parties were ready to go and
9 they should be forced to abide in good faith and move
10 forward. Quality One is not required to do that.

11 The next issue Your Honor pointed out is with
12 respect to how much Quality One has at risk. There are
13 really two parts to this, Your Honor. One is that you were
14 referring to the amount of the break-up fee, compared to
15 what they have at risk, but I also view it in another way.
16 I view it with skepticism as to something that
17 Mr. Wielebinski said.

18 And I'll try and be precise as to what he said
19 because what he said is not what most say in this courtroom
20 in this type of hearing. I expected him to come here and
21 say, Your Honor, if we don't get these deadlines, my client
22 is going to have to walk. That's what I hear all the time,
23 and sometimes it's true -- pretty rare in my experience,
24 though -- but Mr. Wielebinski didn't even say that.

25 He said he's going to have to consider with his

1 client what would happen. So he's not even telling us that
2 they would walk, but more importantly, Your Honor, is they
3 have all this money invested. By their account, over \$4
4 million dollars. They have all this time and opportunity
5 costs invested, two and a half months, 24/7.

6 I don't think it's realistic for them to come to
7 this Court and say we're going to walk under those
8 circumstances, and the only thing we're talking about, Your
9 Honor, is a short period of time. We're not talking about a
10 situation where sometimes it happens where there is a
11 monumental event that will be scheduled for the week after
12 the closing.

13 For example, I was in a luggage case once and the
14 luggage industry event was occurring a week after the
15 scheduled closing and the buyer would essentially be losing
16 the whole year. That's not the case here, Your Honor.

17 Let me move on to the break-up fee, Your Honor.
18 What we heard is that essentially if you look at it in the
19 terms of what's most beneficial to the buyer and include all
20 contingencies and all non-cash, we get to a place that's
21 still above what any reported decision that I have ever seen
22 has approved, 3.1 percent. The highest I can recall seeing
23 is 3 percent.

24 And what those cases all say, Your Honor, is that
25 that's the maximum that the Court should approve, not a

1 starting point and not a -- well, of course, we're going to
2 approve 3 percent. That's what we always do. So we would
3 submit to Your Honor if any break-up fee is appropriate, it
4 should be significantly less and it should be calculated on
5 the cash consideration.

6 Mr. Grillo and Mr. Wielebinski tried to make the
7 point, well, assume liabilities and cure and other things
8 are really the same. They're not, Your Honor, but more
9 importantly, I've never seen a case that has calculated the
10 3 percent based on anything because cash. They're not -- in
11 this particular case, Your Honor, the same thing for a very
12 important reason.

13 We have two groups of secured lenders. We are
14 just at the very beginning of the case and we don't know if
15 those secured claims are valid or fully perfected. If, for
16 example, it's ultimately determined that the second lien
17 lender's lien is not valid, then what do we get? Two notes
18 that are in favor of them on some terms that they've gotten?

19 That's not what should happen. What should happen
20 is what happened in every other case; the break-up fee is
21 calculated on the amount to the estate of cash. Those notes
22 are not really available to the estate if those secured
23 liens are avoided and that is why Courts refer to the cash
24 component.

25 The similar issue, Your Honor, is related to a

1 couple of other parts, the warranty claims and the MDF and
2 some other parts that are part of the calculation of working
3 capital adjustment. The buyer isn't here saying, oh, yes,
4 Your Honor, remember that under certain circumstances, the
5 working capital adjustment can reduce the purchase price by
6 \$7.5 million dollars and of course they aren't saying that
7 their break-up fee should be calculated on that. But we
8 don't know what the break-up fee -- excuse me -- what the
9 ultimate purchase price will be, and part of that is because
10 the things that go into that working capital adjustment are
11 part of what the buyer is asking a break-up fee on and it's
12 not terribly unusual to have a working capital adjustment or
13 other similar type of adjustments, but those types of things
14 that go into that are not included in the break-up fee, in
15 the standard calculation.

16 So, Your Honor, what we get to is a real -- if we
17 look at the true value of this, and I don't see any
18 differentiation really in the cases or any reason to
19 differentiate between the dollars out for a break-up fee
20 versus the dollars out for the expense reimbursement.
21 They're still dollars out to the estate. They still have
22 the same effect on bidding because anyone who bids has to
23 pay both of those. So we have a \$5.25 million dollars
24 break-up fee expense reimbursement, bid protections,
25 whatever name you put on them, and that comes to between

1 10 percent and 14 percent, depending on what the actual cash
2 usage would be, Your Honor. So we believe that's
3 substantially outside of a range of anything that has been
4 approved or should be approved, Your Honor.

5 Mr. Wielebinski also made the point of taint in
6 relationships -- and I will tell Your Honor I don't know
7 anything about the relationships as I stand here today other
8 than what I see in the papers and it raises some questions
9 for me, Your Honor. First of all, the asset purchase
10 agreement requires a substantial payment of about a half a
11 million dollars to be made to the debtors' CEO. We had the
12 discussion about all of the trips that the debtors' CEO took
13 with Quality One and those could be perfectly good faith,
14 commercial, arm's length. I'm not here to tell Your Honor
15 anything different, but on the other hand they may not turn
16 out to be that.

17 And one of the things that causes a bit of
18 concern, Your Honor, is there was pre-petition litigation
19 several months before the filing and the State Court, New
20 York State Court entered a TRO because there was testimony
21 that the debtor had been selling product under market value,
22 and again, that may be perfectly acceptable. It may have
23 been the best thing to do at the time, I'm not here to tell
24 Your Honor anything different, but put that together with
25 the fact that Quality One is a customer of the debtor and a

1 very unusual provision in the asset purchase agreement --
2 and I apologize, Your Honor, we didn't point this out in the
3 objection -- but there's a right of first refusal on behalf
4 of the buyer for any sales of -- excuse me -- of any
5 inventory outside the ordinary course.

6 All of those taken together, Your Honor, might
7 indicate there is something more that we should be concerned
8 about. I want to be very clear, Your Honor, I don't have
9 any facts other than what's in the papers, so I don't want
10 to disparage anyone, but it is possible that our
11 investigation may disclose something.

12 Now, Mr. Wielebinski talked about how the cure
13 amounts should be incorporated into the break-up fee
14 calculation. I'd be more than happy to include that, expect
15 no one in this courtroom has any idea what those cure
16 amounts will be and no one will have that idea until, as I
17 read the asset purchase agreement, at the earliest, a day
18 before the auction and at the latest, a day before the
19 closing. That's because the EPA does not require the
20 purchaser to specify what executory contracts they will
21 designate to be assumed until the day before the auction and
22 gives them the right to reserve, as Mr. Grillo said, de-
23 designate contracts until right before the closing.

24 THE COURT: Are those -- from the committee's
25 analysis, are those cure amounts included in the \$47 million

1 or in addition to the \$47 million?

2 MR. CARROLL: It's sort of both, Your Honor. The
3 cop of \$47 million includes the cure amounts, but the
4 purchase price -- excuse me, the cash component of the
5 purchase price includes those cure amounts so that if the
6 payment to the first lien lenders is less than \$47 million,
7 it still gets increased -- the cash component gets increased
8 by the cure amount.

9 Your Honor, there are certainly a number of other
10 less-important objections that we have and I can go through
11 those if you'd like, but they are in our papers and clearly
12 the big picture items are the break-up fee and the bid
13 protections -- excuse me -- the bid protections and the
14 timing. So I'd like to -- unless you have any questions --
15 move along and Mr. Christopher's counsel, if he has anything
16 to add?

17 THE COURT: All right. Well, let me see if --
18 we'll go ahead and hear from Mr. Christopher's counsel and
19 then U.S. Trustee, if any, issues on the business procedures
20 and then we'll get cross-examination of Mr. Saperstein.

21 MR. CATALANELLO: Thank you, Your Honor.

22 THE COURT: Feel free to just point out the things
23 that are in addition to or you disagree with.

24 MR. CATALANELLO: You just spoiled my thunder.

25 (Laughter)

1 Gerard Catalanello of the law firm, Duane Morris, on
2 behalf of Mr. Phillip Christopher.

3 Correct, Your Honor, I will not stand here and repeat
4 everything that Mr. Carroll said, although I would make it
5 clear for the record that Mr. Christopher supports wholly
6 the objections raised by creditor's committee.

7 In my remarks, which I promise will be brief, I'd like
8 to focus first on process. I lost count around 30 or 35
9 times, how many times I should say that Mr. Grillo mentioned
10 the word process, but what I didn't lose count of or
11 certainly lose sight of, is the fact that when you drill
12 down behind the presentation made by the debtor and by
13 counsel for Quality One, there's no their there, there
14 really isn't. Because there's no meaningful process that's
15 established by way of these proposed procedures.

16 Now, Quality One's lawyer is right, most competitive
17 bidders -- my client is a competitive bidder -- would come
18 up here and say I need more time, of course, everybody wants
19 more time. But that's not what you're hearing today, you're
20 not hearing that from Mr. Christopher or the committee.
21 What we're saying is create a level playing field. Create a
22 level playing field so that the extraordinary relief that
23 PCD is asking for -- and by the way, it is extraordinary --
24 they rushed into court, filed a low slew of papers asking
25 this Court to establish very, very quick deadlines for a

1 very large transaction. That's extraordinary.

2 But they came into court asking for that extraordinary
3 relief without giving the parties an opportunity to fully
4 flush out a fair process. That's not what this is about.
5 That's not what 363 requires. What it does require is that
6 competitive bidders are given an opportunity to do their
7 diligence, to use their investment bankers -- and by the
8 way, Mr. Christopher hired (indiscernible - 11:23:06) as an
9 independent investment banker to flush out information and
10 diligence and to put together the ingredients for a
11 competitive bid. That's what the process requires.

12 Particularly where nowhere in any declaration filed by
13 anybody, is there anything that suggests a sale has to
14 happen, has to happen, by October 3rd or October 10th?
15 Yeah, we know that Quality One wants it to happen like that.
16 I'd do the same thing if I were him, push it through, ram it
17 through.

18 But there's nothing there that truly supports the fact
19 that the deal has to be done by October 3rd or October 10th.
20 And in fact, they've had months, months, you heard it,
21 argument, testimony, statements and declarations, they've
22 had months to formulate their bid. They've taken trips to
23 Asia. They've felony around meeting with vendors and
24 suppliers. They've had the comfort to incubate this bid for
25 a very long period of time and yet their not getting

1 competitive bidders, whether it's my client or others.
2 They're not giving us anything close to that and that's not
3 fair. That's not meaningful process, which is a word you
4 didn't hear in the presentation by the debtor

5 So if there's one point that we would hammer home for
6 the Court to seriously consider, it's the timing. It's the
7 timing, give competitive bidders some more time to formulate
8 their bids, do their diligence

9 Now, second point, information. Mr. Grillo glossed
10 over the fact that everything is in the VDR. Today is the
11 first time I've heard about a VDR. We, therefore, would put
12 in our objection that there should be a VDR. That's what
13 you see in these types of deals. That way there's equal
14 access to information for all competitive bidders. I'm glad
15 to hear that the debtor is going to do that, but what has to
16 be in the VDR is all the diligence required to compute and
17 put together a bid.

18 Inventory, what is an inventory? Detail about
19 defective, refurbished, quality by model number. We need to
20 see that information in order to understand what it is that
21 we're actually bidding on. So information must be real

22 Accounts receivable, what are they? Bad versus good,
23 projected. We need to see that detail. I'm hoping, based
24 on what we heard from Mr. Grillo, that that information is,
25 in fact, going to be in the VDR for my client and for other

1 competitive bidders.

2 Now, what are we bidding against? We don't even know
3 because the asset purchase agreement that's been submitted
4 doesn't have any schedules. Not only is there no
5 information about cure amounts, Mr. Carroll pointed that
6 out, but there's nothing in the schedules to show any of the
7 detail. We don't know what we're bidding against. We need
8 the schedules to the asset purchase agreement so that we can
9 match them up, an apple to an apple because everybody knows
10 when we submit a competitive bid or anybody, debtor is going
11 to look at it, the financial advisor is going to look at it
12 and they're going to say, what is it? Compare it to what it
13 is that we have, right. Line it up.

14 We can't line it up -- we can't redline a document
15 until we get the whole document. We need to know what is it
16 that Quality One is actually buying. We need the schedules.
17 There's nothing in any of the documents filed that provides
18 any of that information

19 So, again, information is critical, Your Honor.

20 THE COURT: Are you talking about beyond assumed
21 contracts and assumed liabilities?

22 MR. CATALANELLO: There are a list of schedules in
23 the APA like liabilities that are being assumed, Schedule
24 2.1. Try to find it. It doesn't exist.

25 So whatever schedules are in the APA, whatever

1 exhibits, they have to be made available to all bidders,
2 that's just fundamental. That's 101.

3 Now, there's a very, very troubling statement in
4 paragraph three of the proposed bidding procedures, which in
5 some substance, Your Honor, says that the debtors can in
6 their own discretion decide what, if any, diligence they're
7 going to give to competitive bidders. I've never seen that
8 before.

9 Clearly, a level playing field would not permit
10 that kind of language. What I'm assuming Mr. Grillo is
11 prepared to do based on some of the remarks he's made is
12 remove that kind of language. Whatever diligence is
13 available to one bidder must be made available to all other
14 bidders and I agree wholeheartedly with the requirement that
15 the committee be included in all of those decisions. It
16 can't be up to the debtor to willy nilly pick who's going to
17 get what; that's not a fair process.

18 Now, in terms of the other objections that
19 Mr. Christopher lodged, again, I'm not going to repeat them
20 because many of them were contained in Mr. Carroll's
21 presentation, but I would emphasize that the good faith
22 deposit break-up fee, that whole dichotomy seriously,
23 seriously requires examination because either one is too low
24 or one is too high, but there's something fundamentally
25 unfair with requiring any competitive bidders to put up a

1 deposit which is nearly double the amount of the stalking
2 horse, while the stalking horse at the same time comes to
3 this court asking for a break-up fee of nearly double its
4 deposit. It's just -- it's unbalanced. It's unbalanced.

5 And however we get there, Your Honor, whether we
6 focus on the cash component only versus the assumption of
7 liability component, I'm not -- I'm not here to tell you how
8 to get there, but again, it's got to be fair. To ask for a
9 competitive bidder to put up \$5.25 million when the stalking
10 horse only has \$2.5 at risk -- and by the way, it could be
11 half of that if the failure to fund obligation is not
12 satisfied -- that's not a fair process. And so it's just
13 got to be fair. It's got to be fair.

14 Whatever deposit the competitive bidder must put
15 up should, of course, include a percentage of the overall
16 purchase price. I'm not looking for any advantage, I'm just
17 looking for a fairer process.

18 THE COURT: And how, in that analysis, how does
19 the treatment of the second lien debt, the DLJ Credit
20 Suisse, how does that differ from the perspective of a
21 prospective bidder? Would you or your client be
22 anticipating that it's an all-cash bid, 105 or whatever the
23 starting number is, plus assumptions, as opposed to \$47
24 million plus assumption of the second lien debt, plus
25 assumed liabilities?

1 What are you all bidding at if you were to bid?

2 MR. CATALANELLO: Well, that's a great question
3 and I don't have an answer yet because we don't have the
4 access to any information, but I will tell you that as a
5 competitive bidder, we clearly support the committee's
6 presentation and position which is that if the second lien
7 lenders are making, quote, financing available, it's not --
8 there's nothing magical about it. All it is, is they're
9 allowing Quality One to take the inventory owned by PCD and
10 liquidate it. That's all they're doing. It's not like they
11 sat down and picked the buyer.

12 Mr. Grillo says know thy borrower. Of course,
13 know thy borrower when you're extending real credit. All
14 they're doing here, Your Honor, is saying, hey, you know
15 what, we want you to buy the asset Quality One. You can use
16 the debtors' inventory and you can liquidate it and pay me
17 over a six months' period of time for Credit Suisse or 18
18 months period of time for PineBridge. I mean if there's
19 going to make that available to Quality One, I truly, truly
20 would question motives if they didn't make it available to
21 all of the competitive bidders.

22 Whether my client will take advantage of that, I
23 don't know, but again, a level playing field would require
24 that everybody gets to liquidate the debtor's inventory and
25 pay off the second lien lenders, to the extent that they

1 have a valid lien and I know that that's an issue that
2 Mr. Carroll has raised.

3 So in a longwinded way, I would say, yes, it
4 should be equal for everybody and whether they take
5 advantage of that, that can be ultimately decided by the
6 bidder and ultimately taken into account by the competent
7 and the debtor when making a decision as to highest and
8 best.

9 Those are the points that I would like to
10 emphasize, Your Honor, and I'm clearly here for any
11 questions.

12 THE COURT: Okay. Thank you.

13 MR. CATALANELLO: Thank you.

14 THE COURT: All right. I do want to get
15 Mr. Saperstein up, but Mr. Grillo, let's address this issue
16 first, if we can, which is at least from the debtors'
17 vantage point, which we then need to hear from the second
18 lien lenders, let's do that. If -- whether it's Christopher
19 or someone has not yet been identified here wants to come in
20 and overbid the Quality One bid, is the second lien
21 financing that's been made available to Quality One in the
22 proposed contract similarly going to be available to other
23 qualified bidders or do they have to bid all cash out of the
24 gate, other than assumed warranty liabilities, et cetera?

25 MR. GRILLO: Excuse me, Your Honor.

1 Again, Emanuel Grillo from Goodwin Procter. I was
2 debating as to how to answer that question for a couple of
3 reasons. One is that Mr. Catalanello's client, longer than
4 any others, has been involved with this company, and has
5 been threatening to bid since February. And again,
6 Mr. Catalanello, when asked whether or not his client was
7 going to bid by Your Honor said, I don't have an answer to
8 that, Judge. I don't have that information.

9 The bottom line is that, Your Honor, until you --
10 there's a phrase that goes "put up or shut up." I think in
11 this instance as far as Mr. Christopher is concerned, who is
12 a litigant with the debtors, to whom just asked us for a
13 confidentiality agreement just this week, notwithstanding
14 the fact that he's been involved with this process for a
15 considerable period of time, now comes forward and says we
16 need a level playing field.

17 If the existing secured lenders want to advance
18 money to Mr. Christopher, he can go ask them. He knows
19 where to find them. Why? Because he was the one who
20 borrowed from them back at the time when he was CEO. It
21 requires no effort on his part to pick up the phone and call
22 Mr. Goldberg's client, Mr. Salzberg's client, and see if
23 they will extend that financing.

24 To come to this court and say to this Court well,
25 we don't know if that's going to be made available to

1 anyone. From the former CEO, who not only ran the company,
2 but left the company with a third of the employees and set
3 up a competitor across the street, I find beyond belief that
4 they would take this Court's time with something said like
5 that.

6 That being said, Mr. Catalanello's client can
7 certainly pick up the phone. He knows them all. He knows
8 Mr. DeCosta from DLJ. He knows personally the PineBridge
9 folks who are providing the financing. You need financing,
10 you pick up the phone. I don't think it's something for
11 this Court to provide to him. No other party who has come
12 in to look at the company to this point in time including
13 the party that has indicated that it is willing to bid has
14 said that they need for the existing secured lenders to
15 provide financing.

16 The bottom line is, the bid is 105. Where Quality
17 One gets its financing versus where Mr. Catalanello's client
18 gets his financing is not frankly, the debtors' concern.
19 The bottom line is, this bid, subject to the contingencies
20 that we were talking about earlier is either financed or it
21 isn't Mr. Catalanello's client can go get financing or he
22 can't, okay. I find it hard to believe that they are going
23 to offer, frankly, in light of Mr. Christopher's conduct,
24 and we're not going to make it a part of this proceeding
25 until Mr. Catalanello's presentation where he pretends that

1 his client's an innocent third party to come in to this
2 court and say all of a sudden, we need stable financing.

3 THE COURT: But at this juncture setting who shot
4 John aside, sure, any potential competing bidder is \$105
5 million in cash?

6 MR. GRILLO: That's how we view -- plus, whatever
7 the opening minimum overbid Your Honor sets is. That's what
8 we -- that's what we view because that's what they're
9 paying, okay. The fact that they got something who's in the
10 deal to finance it, kudos to them. It wasn't because we had
11 anything to do with it. If somebody agrees to finance them,
12 it could be anyone. It could be the gas station down the
13 street. I don't even care. The debtors don't care where
14 that money comes from as far as that goes.

15 THE COURT: All right. Let's get to
16 Mr. Saperstein then.

17 Mr. Dimino, before I do that, any issues from your
18 office's vantage point before we get to the...

19 MR. DIMINO: Thank you, Judge.

20 Alfred Dimino, from the office of the United
21 States Trustee.

22 Judge, I think that the issues, at least those
23 items which are at issue, have been clearly well articulated
24 by both sides. The United States Trustee obviously believes
25 that the process should be established that would have a

1 leveled playing field that would maximize the value of the
2 assets for the benefit of the creditors.

3 I don't think it's lost on anyone that at this
4 stage of this game at \$105 million dollars, this is a sale
5 for the benefit of the secured creditors. There is no money
6 according to the recent data records that I've seen unless
7 there's some imperfection in the perfection of the security
8 interests for the unsecured creditors; therefore, it's
9 fairly obvious why the creditors' committee would want to
10 have as much time as possible to be able to market it to
11 obtain a higher and better offer that would obviously then,
12 lead to money on the table for the unsecured creditors.

13 What -- I heard that there was two issues with the
14 timing. One being the ability of the debtor to continue to
15 operate and the second part being the need on the party of
16 the stalking horse bidder to close. But no one has stated
17 that the parameters that exist at this point, that are being
18 requested, are so set in stone that there couldn't be some
19 modification to that.

20 Given the time and the length of the cases here,
21 United States Trustee would think that if the Court was
22 directed -- was to direct that there be an additional week,
23 I don't think that that would jeopardize the closing, nor
24 does it appear to jeopardize the ability of the debtor to
25 operate and may assist in bringing others to the table.

1 With regard to the break-up fee, if the Court is
2 to determine that a break-up fee is appropriate, it would
3 appear just from the numbers -- or that the amount already
4 is high. There's a million dollars in costs in there and
5 the bid protection on top of that, just as a -- it appears
6 it's somewhere around \$2 million dollars would be reasonable
7 under the circumstances.

8 Additionally, the last issue that I saw was that
9 it seems to me that there's no reason to ask new parties to
10 the table to put up a deposit that's any higher than what's
11 on the table today. That seems to be fair. They're going
12 to have to close. They're going to have to get a -- if
13 another bidder comes in and tops the existing offer, then
14 they're going to have to come in and get their financing and
15 close the deal within the same basic period of time.

16 We obviously like to hopefully see very
17 competitive bidding. That has yet to be seen. Thank you.

18 THE COURT: Thank you.

19 All right. Mr. Saperstein, if you would head to
20 the witness box on the right-hand side of the courtroom, and
21 when you get there, just stand to be sworn by the court
22 reporter.

23 (Witness Sworn)

24 THE WITNESS: Yes, I do.

25 THE CLERK: Please be seated.

1 Please speak and spell your name for the record
2 and your address.

3 THE WITNESS: David Saperstein, S-A-P-E-R-S-T-E-I-
4 N.

5 THE COURT: And again, for the benefit of the
6 record, the Court has accepted Mr. Saperstein's declaration,
7 that ECF docket item 47, as his direct testimony in support
8 of the bid procedures motion. That would then place him on
9 cross-examination to the committee.

10 So, Mr. Carroll?

11 CROSS-EXAMINATION

12 BY MR. CARROLL:

13 Q Good morning, Mr. Saperstein.

14 A Good morning.

15 Q You have -- let me rephrase that question.

16 Have you been the primary person at BGSA working
17 with the debtors to market their assets?

18 A Yes.

19 Q And when did that begin?

20 A January of 2012.

21 Q And when did you first contact Quality One?

22 A I don't have the precise date. It was probably two
23 months after we began.

24 Q So that would be March?

25 A Again, I don't -- I would have to go back to my records

1 and provide you with the precise date.

2 Q Mr. Saperstein, I see that you have some papers with
3 you, would you have those notes with you right now?

4 A No, I do not.

5 Q Okay. Is there someone in the courtroom who does?

6 A No.

7 Q So your best guesstimate is you first spoke with
8 Quality One on or about March of this year?

9 A March or April.

10 Q Okay. And when did Quality One begin working on this?

11 A As soon as we began the discussions.

12 Q And did there come a time when those discussions
13 terminated?

14 A No.

15 Q So, from about March or April of this year until now,
16 Quality One has been working on this transaction with you?

17 A Yes, although the pace of the work ebbs and flows as it
18 does in any deal situation, and it sort of accelerates
19 towards the end, whereas in the beginning, there's a much
20 slower pace of discussion, exploration of strategic merits,
21 things of the sort.

22 Q And I apologize I didn't ask this at the beginning,
23 Mr. Saperstein, but what is your position at BGSA?

24 A I'm a vice president at BGSA. I run all of our M & A
25 execution.

1 Q And how long have you been doing that for BGSA?

2 A I've been doing that for three years.

3 Q And were you in a similar position somewhere else
4 previously?

5 A I was, I was at Goldman Sachs in the investment banking
6 division.

7 Q And how long was that for?

8 A That was also for three years.

9 Q Did you have a previous position similar?

10 A I did. I worked at the -- in the corporate finance
11 group at Deloitte in mergers and acquisitions. Overall,
12 I've been in the mergers and acquisitions field for ten
13 years and I have a bachelor's degree in economics from
14 Stanford and an MBA in finance from Wharton.

15 Q Thank you.

16 And so during your experience, which party is it
17 typically that controls the pace of a negotiations?

18 A It depends on the robustness of the competitive
19 process. To the extent that there is a lot of competition
20 and that there's a lot of interest, it's the seller that
21 sets the pace because the seller has the leverage against
22 the buyers.

23 To the extent that there is not that, then the
24 leverage is a bit more equalized and the buyer has a bit
25 more ability to set the pace.

1 Q Well, let me ask you a couple of questions on that,
2 Mr. Saperstein. In your experience, I'm sure you've seen
3 instances where the seller did not have a lot of leverage
4 and the buyer was, for one of many reasons, the only game in
5 town, and the buyer demanded things with respect to timing,
6 correct?

7 A Can you rephrase the question?

8 Q Sure. Let me try it again.

9 In your experience, you have seen situations where
10 the buyer has more leverage than the seller and the buyer
11 demands certain things respect to timing?

12 A If the question is, have I seen certain situations like
13 that, then the answer is yes.

14 Q And with respect to this negotiation, isn't it true
15 that Quality One was really the only buyer who came to the
16 table?

17 A No, that's not true.

18 We contacted -- well, to specifically address your
19 question, as it relates coming to the table, I would define
20 that as submitting a bid and there were six parties that
21 submitted bids. Five of them were in writing and one of
22 them was verbal.

23 Q One of them was?

24 A Verbal.

25 Q Thank you.

1 And when was that submission, was it -- let me
2 rephrase that, excuse me.

3 Was there a deadline that you set, prior to the
4 filing?

5 A Yes, there were deadlines. There were a series of
6 deadlines that we set, prior to the filing in order to
7 accommodate -- in order to maximize the number of
8 participants who could participate.

9 Q And who was really the driving force of those
10 deadlines, was it the debtors or was it the buyers who were
11 giving you information and that's what you were making those
12 deadlines based upon?

13 A It was the debtors as well as the debtors' advisors,
14 including us and counsel.

15 Q Well, in answers to my previous question you said --
16 and I apologize that I'm not using your precise words -- but
17 you said generally that you were doing that to maximize the
18 number of participants, correct?

19 A True.

20 Q And so your deadlines, the deadlines that you and the
21 debtor set, were based upon what the buyers were telling
22 you, correct?

23 A No, they were based on our judgment of what would be
24 appropriate in order to be able to maximize the number of
25 bidders while taking into account the timing constraints

1 that the company had which were very, very real, related to
2 what was happening in the operations with customers and
3 vendors.

4 Q And your judgment was informed based upon -- in
5 addition to the items that you just mentioned -- the
6 information the bidders told you, correct?

7 A I don't really understand the question.

8 Q Let me ask it a different way. So, if I understand
9 what you're saying, you're telling me that what the bidders
10 told you about the timeline and the deadlines was irrelevant
11 to your judgment; is that correct?

12 A No, it was a factor, but not the determining factor.

13 Q And in terms of the negotiations with Quality One, you
14 mentioned at the beginning that the pace -- and again I'm
15 not using your exact words -- but the pace ebbed and flowed;
16 is that correct?

17 A Correct.

18 Q And with respect to those deadlines -- excuse me --
19 with respect to that pace, isn't it true that Quality One
20 was really the one who was really determining those
21 deadlines?

22 A No, no, it was the case that Quality One had a certain
23 number of workstreams that they needed to accomplish in
24 order to arrive at the binding purchase agreement that was
25 submitted to this Court.

1 And to the extent that -- and so we understood
2 those. We listened to them. We took them into account, but
3 at the same time, we never allowed them to take all of the
4 time that they want in order to work through those various
5 workstreams. I primarily relate it to financing and due
6 diligence.

7 Q Primarily relate it to?

8 A Financing and due diligence.

9 Q Thank you.

10 In your declaration, you mentioned one of the
11 intangible benefits of having a stalking horse bid -- and
12 there were a couple of them, actually. One was that it
13 offers assurances to the debtors' vendors and customers and
14 carriers and other business parties -- counterparties, that
15 the debtors' business will continue as a growing concern; is
16 that correct?

17 A Correct.

18 Q And you also said that having a committed buyer
19 sentenced a very clear signal to the market about the
20 assets, their value, and the ability to continue as a going
21 concern; is that correct?

22 A That's correct.

23 Q And have you -- withdrawn.

24 In your declaration you've also indicated that --
25 I'm characterizing -- that the assets had been fully shopped

1 prior to the signing of that declaration; is that correct?

2 A That's correct.

3 Q And is that what you believe to be the case today as
4 well?

5 A Yes, absolutely.

6 Q Okay. And Mr. Grillo indicated earlier -- and I think
7 that you were here in the courtroom at the time -- that
8 after the bankruptcy filing, there was a new party that came
9 forward and I think Mr. Grillo characterized them as a party
10 we all thought would be very interested and hopefully come
11 up with a substantial bid.

12 Did you hear him say that?

13 A Yeah, absolutely, and not only did that party come, but
14 we brought that party in.

15 Q And when did that happen, Mr. Saperstein?

16 A Discussions occurred approximately one week before the
17 filing.

18 Q And when was it that you learned of this party?

19 A One week before the filing.

20 Q So if I understand you correctly, you believe --
21 withdrawn.

22 So, if I understand correctly, this is a party
23 that you identified, but did not identify until one week
24 before the bankruptcy filing; is that correct?

25 A That's correct.

1 Q Okay.

2 MR. CARROLL: Your Honor, may I have just one
3 moment?

4 THE COURT: Certainly.

5 MR. CARROLL: Thank you.

6 Thank you, Your Honor. Just a couple more
7 questions for Mr. Saperstein.

8 BY MR. CARROLL:

9 Q I believe Mr. Grillo also indicated earlier that there
10 were a number -- and this number may not be correct -- but I
11 think he said 16 parties at the creditors' committee's
12 financial advisors raised with you that had not been
13 contacted before; is that correct?

14 A There were a certain number of parties.

15 Q Mr. Saperstein, could I just ask you if you --

16 A Put a number?

17 Q -- if you could give us an answer, if you need to
18 refresh your recollection or do something previously, but
19 I'd like first for you to answer the question.

20 A Oh, yeah. The answer is yes. I don't know about the
21 number 16, which is what I was looking to verify.

22 Q Very well, if you'd like to look, please go ahead.

23 A Yep. The answer is yes to your question.

24 Q And those are all parties that you had not spoken with
25 or identified previously, correct?

1 A That's incorrect.

2 Q I'm sorry?

3 A That's incorrect.

4 Q Oh, I'm sorry, what about that is incorrect?

5 A There were a number of parties that we had already
6 spoken with.

7 Q Oh, can you tell me how many you had already spoken to?

8 A One, two, three, four, five -- five.

9 Q Five that you had already spoken to, so it was about 11
10 then, correct?

11 A Yeah.

12 Q And then had you reached out to Mr. Christopher, prior
13 to the bankruptcy filing, to engage him?

14 A No.

15 Q And why was that?

16 A Because we didn't view Mr. Christopher as having the
17 financial ability to consummate a transaction like this.

18 Q So you just didn't ask him, did you?

19 A No.

20 Q Under the term -- withdrawn.

21 Have you reviewed asset purchase agreement?

22 A Of course.

23 Q Thank you. And under the terms of the APA, there is a
24 working capital adjustment, correct?

25 A Correct.

1 Q Do you understand how that works?

2 A Yes.

3 Q And is it correct that if there were a positive
4 adjustment to working capital of say \$20 million dollars,
5 the maximum adjustment to the purchase price would be \$7.5
6 million dollars?

7 A Yes.

8 Q And that is the case if the positive adjustment is
9 higher, say, \$30, \$40, \$50 million dollars as well, correct?

10 A Correct.

11 Q And if there was no cap to that, that would increase
12 the purchase price by whatever the working capital
13 adjustment would be, correct?

14 A Correct.

15 Q And where would the value of that increase go?

16 A To the estate.

17 Q And to whom in particular, what constituency of the
18 estate? Let me rephrase the question for you.

19 Isn't it true that because the senior lenders are
20 being paid in cash and the second lien lenders are receiving
21 notes in the satisfaction of their claim, that that value
22 would go to the unsecured creditors?

23 A I would need to review. I don't -- I don't recall. I
24 don't recall if the working capital adjustment implies an
25 increase in the PineBridge note exclusively or if it goes

1 elsewhere.

2 Q Well, what we're talking about actually is not the
3 PineBridge note, because what we're talking about is what
4 would happen if there was not a cap.

5 A Right.

6 Q So if there was not a cap and there was additional
7 value brought in, where would that value go?

8 A Yeah, so it would go to --

9 MR. GRILLO: Objection.

10 That's not part of the deal. I mean the deal is
11 what the deal is. The fact that there's -- if it were not
12 part of (indiscernible - 11:56:42) asks the client to
13 speculate where the funds would go if the deal was different
14 than it's proposed, but the bottom line is that the deal is
15 what's in the documents. It's not if there were not cap on
16 the adjustment, where would the value go? That's not the
17 deal. If someone else wants to bid that deal, they
18 certainly can.

19 THE COURT: Do you want to refer to a specific
20 section of the APA so that we can at least drill this down
21 just a little bit further.

22 MR. CARROLL: If I could have just a moment, Your
23 Honor?

24 MR. GRILLO: Your Honor, if he's going to refer to
25 a specific -- can I bring a copy of the agreement to the

1 witness?

2 THE COURT: I think that would be fair.

3 THE WITNESS: Thank you.

4 MR. GRILLO: Judge, would you like a copy of the
5 documents?

6 THE COURT: The Court has them, yes.

7 MR. GRILLO: Okay. Your Honor, may I approach the
8 witness, please?

9 THE COURT: Yes.

10 BY MR. CARROLL:

11 Q Mr. Saperstein, I would like to direct your attention
12 to page 20 of the asset purchase agreement, and Section 4.5.

13 And are you familiar with that section?

14 A I am.

15 Q Is that the section that you were just talking about,
16 the working capital adjustment?

17 A Yes.

18 Q And if I could ask you to go back for a moment, there's
19 really two parts to the working capital adjustment. There's
20 a positive side, which we were talking about, and a negative
21 side; is that correct?

22 A Correct.

23 Q So, if the working capital judgment is negative and the
24 adjustment requires an adjustment of more than \$7.5 million
25 dollars negative, what happens under that circumstance?

1 A It's MAE.

2 Q It's a?

3 A A material adverse event.

4 Q And what does that give rise to?

5 A It gives Quality One the opportunity to terminate -- to
6 not close on the agreement.

7 Q And in that event they would get their full deposit
8 back and they would be released from any liability, correct?

9 A I don't know about the deposit.

10 Q So, in the event that the working capital adjustment
11 goes down by seven and a half million -- excuse me -- more
12 than \$7.5 million, the purchaser gets the ability to walk.

13 But in the event that it goes above any positive
14 \$7.5 million, there's a cap on it and the buyer would
15 receive the benefit of that working capital adjustment; is
16 that correct?

17 A They would receive the benefit of the difference
18 between the cap and the above.

19 Q Yes. Anything above \$7.5 million, the buyer would
20 receive the benefit of, correct?

21 A Correct.

22 Q Thank you.

23 And we were talking a moment ago and I'll try to
24 be a little bit more clear, if the terms of this changed
25 such that that positive cap were removed, there would be

1 additional value, potentially, that could be recovered by
2 the estate is, I believe, what you said a moment ago,
3 correct?

4 A Potentially.

5 MR. GRILLO: Objection, Your Honor.

6 THE WITNESS: I mean that's not what this says in
7 here. There's no provision --

8 THE COURT: Hold on. Hang on.

9 Let him get his objection in.

10 MR. GRILLO: Yes, the objection is it calls for
11 speculation. This is the point that we were raising earlier
12 about if the cap were removed. I think we're prepared to
13 concede, for purposes of the testimony and the facts and the
14 record, that there is a cap at 7.5 and a floor at 7.5. I --
15 there's no sort of misunderstanding as to how it works and
16 Mr. Carroll was perfectly correct to say that if the value
17 was in excess of \$7.5, the bidding aware is to the benefit
18 of the buyer. We've made no bones about that fact.

19 We don't think it's going to get there and we can
20 put on other testimony to say that it won't -- and this is
21 only for purposes of bid protection here -- but for purposes
22 of why we're here today, I don't think that we can test that
23 fact in any way or what the implication of it is.

24 MR. CARROLL: Your Honor, my question was a little
25 bit different, and my question relates to what would happen,

1 potentially, in bidding -- and I think it's relevant here
2 today based on our discussion of the break-up fee in that
3 the working capital adjustment may go up a lot and we don't
4 know what it's going to be, but the buyer would get the
5 benefit of that under this transaction, but the unsecured
6 creditors would get it if it were changed as we believe
7 appropriate.

8 THE COURT: Well, going as this, the issue isn't
9 whether or not a different form of contract might be
10 negotiated with this or some other purchaser. I've not yet
11 heard a suggestion that another purchaser would be allowed
12 to unwrap the package and bid on a different form of
13 contract.

14 To the extent that another perspective purchaser
15 is asked to speak to this form of contract, it would seem to
16 only go to the calculation of the purchase price, which
17 would be a factor in determining the break-up fee, not what
18 would happen if the clause were written differently.

19 So I'll allow it for that limited purpose. If you
20 want to ask Mr. Saperstein what his crystal ball is telling
21 us today on what that might -- what the working capital
22 might look like in 30, 40, or 60 days, he'll tell us what he
23 knows or doesn't know.

24 But that question is relevant for that limited
25 purpose.

1 MR. CARROLL: Yes, Your Honor.

2 And I think my purpose includes that and it's also
3 slightly different, which is a bidder can modify the asset
4 purchase agreement. Any bidder could remove that cap, so
5 that's why I think it's also relevant as well.

6 THE COURT: All right.

7 MR. CARROLL: And with that, Your Honor, I think
8 the record is clear. We don't need to belabor the point any
9 further and I don't have any questions for Mr. Saperstein.

10 THE COURT: All right.

11 Just hang on there.

12 Mr. Catalanello, any non-duplicative?

13 CROSS-EXAMINATION

14 BY MR. CATALANELLO:

15 Q Thank you, Your Honor

16 Gerard Catalanello from the law firm, Duane
17 Morris, on behalf of Mr. Phillip Christopher.

18 Mr. Saperstein, I believe you testified earlier
19 that -- that you did not reach out to Mr. Christopher in
20 connection with any efforts to buy the company; is that
21 correct?

22 A That's correct.

23 Q Okay. And I believe you also testified that you didn't
24 reach out to him because you did not believe that he had the
25 financial wherewithal; is that correct?

1 A Correct.

2 Q Have you ever met with Mr. Christopher?

3 A No.

4 Q Have you ever examined his bank accounts or anything
5 regarding his financial wealth?

6 A There are no individuals that we contacted to purchase
7 this -- this company.

8 Q Okay. Are you aware that Mr. Christopher organized the
9 2004 sale of the company from Audiovox to UTstarcom?

10 A Yes.

11 Q Okay. Are you aware that Mr. Christopher led the 2008
12 management buyout from UTstarcom?

13 A Yes.

14 Q Okay. And despite the fact that he essentially
15 organized two acquisitioning of this company, you still
16 didn't think that you had to reach out to him in connection
17 with your sale (indiscernible - 12:04:49)?

18 A Yes, I would also add --

19 Q Just yes or no?

20 A The answer is yes. I would like to add another reason,
21 which is that there's been a very litigious relationship
22 between the parties and that was another driver.

23 Q So did anybody instruct you not to reach out to
24 Mr. Christopher?

25 A No.

1 Q Okay. Thank you.

2 MR. CATALANELLO: No more questions.

3 THE COURT: Before I turn you back to Mr. Grillo,
4 there's just one question. So there appears, at least on
5 this record, to be approximately 12 parties who were not
6 part of the pre-bankruptcy due diligence market, and sale
7 efforts, with the exception of one who may have been
8 involved about a week before the bankruptcy was filed?

9 THE WITNESS: Correct.

10 THE COURT: And with respect to those parties,
11 what would be a reasonable period of time on a transaction
12 of this size and nature for them to conduct meaningful due
13 diligence, to make a rational business decision as to
14 whether or not to make an offer for the purchase of this
15 estate's assets?

16 THE WITNESS: Approximately one week, and the
17 reason for that is that we had spoken with all of them and
18 with the exception of the bidder that we brought, that we
19 began discussions with one week before the filing, all of
20 them have elected to pass for reasons related to the
21 strategic fit or their inability to exceed the stalking
22 horse bid.

23 THE COURT: So of that group of 12, there's one
24 potential player left who says they can be ready in a week?

25 THE WITNESS: No, I apologize.

1 The -- all of the -- all of the companies that the
2 committee has submitted to us to each out to post-petition
3 have passed on the opportunity. We had discussions with all
4 of them, and for reasons independent of the timetable, and
5 the party that we've all been talking about, that we expect
6 to bid, has not voiced any concerns to me about their
7 ability to comply with the timetable set by the Court.

8 THE COURT: All right. Thank you.

9 Mr. Grillo, any redirect?

10 MR. GRILLO: Your Honor took care of my redirect
11 for the most part. I was just going to make a comment about
12 that party that we've been talking about. We've been in
13 contact with their counsel and we -- I should have made this
14 in my opening presentation -- when we extended the deadline
15 from Saturday until Monday, the party that got involved a
16 week before the bankruptcy case, they indicated that they
17 would be fine with that. So they are prepared to bid by
18 virtue of (indiscernible - 12:07:24) -- prepared to bid or
19 not bid by the extended deadline from the 28th to the 30th.

20 With that, I have no specific questions for
21 Mr. Saperstein on redirect?

22 THE COURT: All right. Very well.

23 You may step down.

24 MR. SAPERSTEIN: Thank you.

25 THE COURT: Any other evidence, then, on the bid

1 procedure motion?

2 MR. CATALANELLO: Yes, Your Honor.

3 We would like to call our financial advisor to
4 testify.

5 THE COURT: All right.

6 MR. CATALANELLO: Your Honor, I would like to ask
7 Mr. Conor Tully, of FTI Consulting to take the stand.

8 MR. GRILLO: Your Honor, just noting for the
9 record, because obviously we had no prior notice of this
10 witness. He's not submitted an affidavit or anything else
11 and this is the first opportunity that we're getting to
12 speak with him at this point in time.

13 I think it's inappropriate, frankly, in and
14 objection to now start to offer factual evidence when
15 there's no affidavit that's been submitted as part of the
16 objection. I just wanted to submit that for the record.

17 MR. CATALANELLO: The primary reason we would like
18 to have his testimony, Your Honor, is to respond to
19 something that Mr. Saperstein said for the first time a
20 moment ago. But certainly, Mr. Grillo, has plenty of
21 opportunity to speak with Mr. Tully. They have been on the
22 phone several times and they certainly could have done
23 anything they wanted such as ask for who our witnesses were
24 going to be.

25 And it's certainly not a surprise at a hearing of

1 this nature that we would present our financial advisors. I
2 think it's almost commonplace, Your Honor.

3 THE COURT: All right.

4 Well, let's get him up and sworn and I will limit
5 his scope today to rebuttal which is the purpose for which
6 you wanted to call him.

7 MR. CATALANELLO: Absolutely, Your Honor. Thank
8 you.

9 THE CLERK: Please raise your right hand.

10 (Witness Sworn)

11 MR. TULLY: I do.

12 THE CLERK: Please be seated.

13 Please speak and spell your name for the record
14 and your address.

15 DIRECT EXAMINATION

16 BY MR. CATALANELLO:

17 Q Can you please spell your name.

18 A Conor Patrick Tully, C-O-N-O-R P-A-T-R-I-C-K T-U-L-L-Y.

19 Q Mr. Tully, could you tell us your position with FTI,
20 please?

21 A I'm a senior managing director in the corporate finance
22 group of FTI.

23 Q And how long have you been?

24 A That's right approximately nine years.

25 Q And before that, did you have a similar position?

1 A I did.

2 Q What was that?

3 A I worked in the corporate finance group at Ernst &
4 Young, corporate finance, for approximately eight years.

5 Q And do you have educational background that is similar?

6 A Yes, my undergraduate degree is in accountancy from
7 Manhattan College. I'm a certified turnaround professional,
8 a CIRA, which is a certified insolvency reorganization
9 advisor. I'm a CPA. I'm accredited in business evaluation.

10 Q Thank you, Mr. Tully.

11 And with respect to the debtors, what was your
12 relationship? What is your role?

13 A Our role -- FTI is the proposed financial advisor to
14 the Official Unsecured Creditors Committee.

15 Q In your experience, Mr. Tully, have you been involved
16 in situations where the debtors assets -- excuse me -- where
17 a company has marketed, substantially, all of its assets
18 like the debtor, here?

19 A Yes.

20 Q Has it happened more than once?

21 A I've been involved in numerous 363 sales, maybe 15, 20
22 would be my guesstimate.

23 Q Okay. And are -- have some of those occurred in the
24 recent past?

25 A Yes.

1 Q And in your experience, what is the typical time for a
2 new party, who first learns about the opportunity to
3 purchase assets, what's the typical time they would want for
4 due diligence?

5 A It obviously depends on the complexity of the assets
6 being purchased. I mean if it's a single real estate clip
7 case they could, you know, get there relatively quickly,
8 assuming they have the appropriate real estate background.

9 More complex estate assets would take more time
10 and diligence to get comfortable with.

11 Q And even in that real estate context, what would the
12 minimum someone would require?

13 A It's difficult to say a minimum, but I would say, you
14 know, three to four weeks to several months, depending on,
15 you know, the situation.

16 Q Have you seen situations where parties have bid in less
17 than say, ten days?

18 A Yank of any off the top of my head where a bankruptcy
19 case would file and parties would become aware of it and
20 then would need to sit and be (indiscernible - 12:12:25) in
21 ten days, no.

22 Q And so, I think you were in the courtroom when
23 Mr. Saperstein indicated that one week would be sufficient,
24 correct?

25 A I think I heard that as the testimony, yes.

1 Q Do you think that's a reasonable time period?

2 A I think that my professional judgment is aggressive, no
3 doubt.

4 Q And you mentioned that in a real estate context,
5 perhaps three or four weeks might be sufficient, but a more
6 complex transaction, you would need more time.

7 Would you say this is a more complex transaction?

8 A I would. I in this is more complex than simple real
9 estate, although, not as complex as I've seen other
10 situations.

11 Q And you heard Mr. Wielebinski and Mr. Grillo earlier
12 talk about the extent of the debtors' relationships with its
13 vendors, its carriers and other parties and how important
14 that was to a buyer, did you not?

15 A I did.

16 Q And based on your experience with the debtor, do you
17 believe that those are items that could be -- that a buyer
18 could satisfy themselves with in just a week?

19 A I think it would be difficult for them to get that kind
20 of comfort in that short of a time frame, yes.

21 Q And the proposed time frame that we are now dealing
22 with by the debtors takes us to a bid deadline of September
23 30th. Do you think it's reasonable to expect a new bidder
24 to come in on that timetable?

25 A I think it's difficult and it would depend on their

1 purchase price. It may not lead them to the highest price
2 potentially. They may need to leave certain value on the
3 table or in contingency or to sort of in the back of their
4 mind, account for sort of diligence holes that they've --
5 they just certainly weren't going to -- or able to fill,
6 given the time frame.

7 Q So what you're saying is that because there's a limited
8 timing, they might not be able to bid as much as they
9 otherwise would, correct?

10 A That's what I'm saying, yes.

11 Q You spoke with the financial advisors for the bidder
12 that we've been discussing, Mr. Saperstein mentioned is new
13 to the table, correct?

14 A Yes.

15 Q And isn't it true that they told you that they needed
16 more time to -- for the bid deadline?

17 MR. GRILLO: Objection; hearsay.

18 THE COURT: Well, it is, but I'll allow it.

19 It's in direct rebuttal to what Mr. Saperstein add
20 alluded to.

21 MR. CATALANELLO: Thank you.

22 THE COURT: And they can identify them because
23 there's an NDA.

24 MR. CATALANELLO: Certainly, Your Honor, I think
25 we could identify them in chambers if that's a concern.

1 THE COURT: Well, let's just refer to them as
2 "them," for the time being.

3 (Laughter)

4 MR. CATALANELLO: That should work.

5 THE COURT: Or "they" depending on the syntax.

6 MR. CATALANELLO: Certainly.

7 BY MR. CATALANELLO:

8 Q And, Mr. Tully in your discussions with them, did they
9 ask you for additional time and tell you that it would be
10 important to their bid?

11 A The financial advisor to that party, yes, did say they
12 would like a little more time.

13 Q And didn't they also tell you that the financial
14 advisor was just engaged more recently than the bankruptcy
15 filing?

16 MR. GRILLO: Objection; (indiscernible -
17 12:16:58).

18 It's also calling for hearsay.

19 THE COURT: The same, overruled.

20 Let's just -- let's just get this string out.

21 THE WITNESS: Yes, my impression was that they
22 only very recently have become involved.

23 BY MR. CATALANELLO:

24 Q And do you know that they also hired a law firm to
25 represent them, but also only in the last few days or

1 certainly more recently than the filing?

2 A That was my understanding, yes.

3 MR. CATALANELLO: Your Honor, I have no further
4 questions.

5 THE COURT: Mr. Tully, before I turn you over to
6 Mr. Grillo, did you get any quantification of what a little
7 more time means? That's, obviously, a bit vague. Is that a
8 day? A month? Somewhere in between?

9 THE WITNESS: It was somewhere in between, and
10 I'll narrow it further for Your Honor. I think that the
11 quote was it's not weeks, you know, it's days. So it's a
12 number of days. I wasn't under the impression that it was
13 three to four weeks. I was left with the impression that it
14 was one or two days. It was somewhere in that more narrow
15 band.

16 THE COURT: All right. Thank you.

17 MR. CATALANELLO: Thank you.

18 THE COURT: Mr. Grillo?

19 CROSS-EXAMINATION

20 BY MR. GRILLO:

21 Q First of all, good afternoon, Mr. Tully. I'm looking
22 at the clock to make sure that I had my time correct.

23 Just a few questions. You talked about sort of
24 short timelines within which to sell a company. Is six
25 months a reasonable period of time within which to sell a

1 company?

2 A I would say, yes.

3 Q So if they engage in a process for a six-month period
4 of time, that would be a pretty good chance to get
5 everybody's who's out there, isn't it?

6 A Yes.

7 Q So in this case here, the fact that there was a six-
8 month process pre-petition would have to go into your
9 consideration as to what the post-petition period would be,
10 would it not?

11 A It would.

12 Q Okay. So the bottom line is, if there was a six-month
13 period of time, that's already taken place and that's part
14 of the testimony record, we could consider the company then
15 pretty well ready, could we not?

16 A Yes, but I think I was answering questions with respect
17 to a new bidder just coming to the table.

18 Q I understand that, because I'm asking you a different
19 question, right.

20 A Uh-huh.

21 Q We're talking about the sale process here. You've been
22 proposed as a rebuttal witness, and I'm asking you in your
23 experience what a reasonable period of time was to sell a
24 company, and I asked you if that was six months and you
25 indicated that it was, correct?

1 A Yes, I would actually say that's a long period of time
2 to be more precise in my experience.

3 Q Okay. Great.

4 And then in the context of a bankruptcy case, you
5 talked about less than ten days being tough, right, to sell
6 a company, and then even 30 days was kind of tough to sell a
7 company, correct?

8 A No, I think it was oh just to make it a little more
9 precise, I think it was a brand new party coming in, never
10 heard of the company today, tomorrow start your due
11 diligence. Ten days would be tough, depending on the
12 complexity of the company if you get there.

13 Q Okay. But we all know that there are -- you're an
14 experienced restructuring professional -- we all know that
15 companies have been sold in bankruptcy in less period of
16 time, do we not?

17 A It certainly happens.

18 Q Right, and in fact, even some of the biggest companies
19 are sold in bankruptcy in less period of time, aren't they?

20 A Yes.

21 Q Lehman, General Motors, we sold billion-dollar
22 companies in bankruptcy in less time than that.

23 A Under really unique scenarios, yes, it's true.

24 Q But what wasn't unique in this case, was it, Mr. Tully,
25 the fact that we had a six-month marketing period pre-

1 petition and by your testimony, that's generally considered
2 sufficient periods of time to move a company, is it not?

3 That was your testimony?

4 A Yeah, I would say that -- if the question was, if the
5 pre-petition marketing process of six months sufficient or
6 would you need more than six months? I would say that six
7 months is certainly sufficient in most instances.

8 Q Thanks.

9 I just want to ask you a couple of questions.
10 Your side has also challenged the break-up fee, has it not?

11 A Yes.

12 Q Okay. And with respect to the break-up fee, your aware
13 -- well, strike that.

14 Are you aware of the Cabrini Medical Center
15 bankruptcy case?

16 A The name sounds familiar. I don't know the case at
17 all.

18 Q Do you know what the break-up fee was in that case?

19 MR. CARROLL: Objection, Your Honor.

20 Your Honor had already limited Mr. Tully's
21 testimony to a very specific area at Mr. Grillo's request.
22 It's not appropriate for him now to --

23 MR. GRILLO: Fair point, Your Honor.

24 I will step back from that. We asked him about
25 the timing. I think we've asked him those questions about

1 the timing as far as that those goes.

2 BY MR. GRILLO:

3 Q I do have one other related set of questions about
4 timing, though, that relate to this specific case and the
5 position that they've taken. Is timing, in effect -- well,
6 strike that.

7 One of the factors that you consider with timing
8 has to do with the operations of the company, does it not?

9 A I think you need to balance -- look at things like
10 that, the operations of a company being one.

11 Q And certainly, you would want to look at the operations
12 of a particular debtor to determine whether or not timing
13 makes sense, does it not?

14 A In the vacuum of a buyer coming in and do they have
15 enough time to make a determination of will I buy this
16 company at what price, I don't know that that's -- that that
17 buyer thinks that much about the operation of the company.
18 As part of their due diligence, they're looking at the
19 operation of the company.

20 Q I apologize. I didn't make myself clear. I was
21 referring from the company's perspective, that isn't it fair
22 to consider one of the factors -- and I'll try and rephrase
23 me question.

24 Is it fair to consider one of the factors, the
25 financial condition of the company in terms of how much time

1 it has to complete a sale?

2 A Yes.

3 Q And wouldn't one of those factors be sort of how much
4 trade credit it's getting from its vendors?

5 A You could factor that. I mean that could be a
6 consideration in theory.

7 Q Right. Would it also be a consideration if one of the
8 vendors, who is a member of the committee, has told the
9 company that it wouldn't be able to supply it any more
10 product during the bankruptcy?

11 MR. CARROLL: Objection, Your Honor.

12 This calls for speculation --

13 MR. GRILLO: No, it doesn't.

14 MR. CARROLL: -- and it's hearsay.

15 MR. GRILLO: Well, I asked him what a factor would
16 be. We were talking -- the issue was --

17 THE COURT: Wasn't that subsumed in the first
18 question, though, if the debtor's access to purchasing
19 product has been impaired in the marketplace, doesn't that
20 impact on the due diligence timing that the debtor can
21 afford? It doesn't really matter who said I won't sell to
22 you anymore. The issue is, if the debtor can't buy product
23 anymore, doesn't that end it? At least on that line,
24 wouldn't you agree?

25 MR. GRILLO: Actually, it doesn't, Your Honor,

1 because the party that has turned the debtor off -- and what
2 I was going to ask Mr. Tully is if he knows this because he
3 used to represent the committee -- is one of the members of
4 the committee itself.

5 MR. CARROLL: Your Honor, Mr. Grillo can certainly
6 ask Mr. Tully what he knows about a committee member doing
7 certain things, but we've had no testimony that any vendor
8 has turned off the debtor. We've heard Mr. Grillo say it,
9 but we haven't had any testimony.

10 MR. GRILLO: No, what we've had is testimony that
11 from Mr. Saperstein in deposition and also part of the
12 Kuntzman (ph) declaration to which there was no cross-
13 examination, that the company was in extraneous, that the
14 trade was constricting terms and that was affecting the
15 timing of the sale.

16 One of the parties that is doing it is a member of
17 Mr. Carroll's and Mr. Tully's committee. So one of the
18 questions that is extraordinarily appropriate under those
19 circumstances, in our view, is what credit -- if you want to
20 extend the timeline, show that the company isn't being hurt.

21 What doesn't make sense to me, at least, is how a
22 member of the committee, who's asked its counsel to come
23 forward today, is one of the parties who can no longer allow
24 purchases in bankruptcy and then to have counsel and its
25 advisor come in and say, well, we need more time.

1 THE COURT: Isn't the fair question then from this
2 witness, do you know whether the debtor is no longer able to
3 purchase necessary product to sustain its operations.

4 MR. GRILLO: That was my question before the
5 objection, Your Honor. I'm happy to have you rephrase it
6 for the witness.

7 MR. CARROLL: I don't think that was the question,
8 but I just want to -- not to argue with the objection -- I
9 just want to point out one other matter.

10 Mr. Grillo mentioned that certain things were in
11 the Kuntzman affidavit --

12 THE COURT: We haven't gotten to Kuntzman yet.

13 MR. CARROLL: That's exactly what I was going to
14 say; it hasn't been offered, Your Honor. I don't --

15 MR. GRILLO: It was offered --

16 MR. CARROLL: -- if he's here, but Mr. Grillo's
17 comment about the Saperstein declaration is incorrect also.
18 That's not in there.

19 THE COURT: Well, it seems in the correct protocol
20 standpoint that the Kuntzman affidavit, while it goes to
21 both, played more to the DIP financing and I was going to
22 take his affidavit and his cross-examination. When we turn
23 to DIP financing, I will simply consider it for purposes of
24 both because I'm going to rule on them together, so we'll
25 get to Mr. Kuntzman when we get back together after a break

1 today.

2 MR. GRILLO: Understood.

3 THE COURT: But let's finish up.

4 MR. GRILLO: Your Honor, the question with this
5 witness on the stand, the question is -- really, what it
6 comes down to, and the argument is, is the witness aware of
7 all of the facts and circumstances that affect timing for
8 the sale? This is the committee's financial advisor. We're
9 asking about what he knows of what the members of the
10 committee are doing.

11 When it comes time, if Mr. Kuntzman is introduced
12 as a witness, his testimony has already been admitted at the
13 first hearing, if he's re-introduced as a witness, then we
14 can certainly ask Mr. Kuntzman those questions and
15 Mr. Carroll can cross-examine on it.

16 The question right now, as it respects the issue
17 that's before the Court in connection with timing, because
18 it's the committee's contention that only the bidder has an
19 issue with the timing.

20 It's been our contention in all of the papers that
21 we've filed that it's also the debtors' issue. It's fair to
22 ask, we think, Mr. Tully, what he knows. If the answer is
23 nothing, then that's all we're looking to establish. If he
24 does not know, that's okay; he can answer that way.

25 THE COURT: All right.

1 MR. CARROLL: I have no objection to him -- to the
2 question of asking him what he knows.

3 THE COURT: All right.

4 Mr. Tully, what do you know?

5 THE WITNESS: What was the question?

6 (Laughter)

7 THE COURT: I think the narrow, limited question
8 is, do you know whether this debtors' access to product or
9 inventory has been curtailed either substantially or
10 significantly in the marketplace; and if so, how does that
11 affect the timing that the debtor has to ferret out other
12 potential purchasers?

13 THE WITNESS: Okay. I don't have firsthand
14 knowledge of exactly what types of terms the debtors are
15 getting or what types of products vendors are continuing to
16 ship. My assumption is that, I think the top three
17 creditors who are on the committee are owed circa \$165 or
18 \$185 million dollars.

19 So I would think that they're taking -- they're
20 probably not providing any credit going forward. I think
21 that would be a logical assumption. I don't know it as a
22 fact, and, you know, I think if there's a mutually
23 beneficial situation where one of the suppliers has product
24 and the debtor needs it, at a price, I think the debtor
25 could obtain it, that seems, to me, to be obvious. But I

1 don't have exact facts and knowledge of exactly every
2 discussion the debtors are having with committee members who
3 --

4 BY MR. GRILLO:

5 Q The short answer is, then, you don't know, right? You
6 talked about assumptions and you talked about -- you just
7 don't know what the members of the committee are doing vis-
8 a-vis providing product to the debtors at this point in
9 time?

10 A No, I see that there are purchases. From the cash
11 flow, I see that product must be being purchased unless the
12 debtors are paying for pre-petition product; post-petition,
13 which I assume isn't the case. But I don't know the
14 specifics of debtors' discussions with vendors.

15 MR. GRILLO: We have no further questions of this
16 witness, Your Honor.

17 THE COURT: All right.

18 MR. WIELEBINSKI: May I ask a question or two,
19 Your Honor?

20 THE COURT: I'm not certain of the stalking
21 horse's standing to examine witnesses here, but do any of
22 the parties have any issue with that?

23 MR. CARROLL: Your Honor, I would certainly agree
24 with you. I have not seen a Court allow a stalking horse
25 bidder permission to cross-examine or otherwise participate

1 in this way and we would object.

2 MR. GRILLO: At the sake of being contrary, the
3 bottom line is when -- what the case law says with respect
4 to stalking horse bidders is that they can't, after the --
5 or unsuccessful bidders can't come in after the fact to
6 challenge the bid procedures.

7 Under -- the question of who's a party in interest
8 is not limited merely to creditors and equity holders, but
9 rather anyone involved. It's included, but not limited to
10 is the language in the statute. So it would be our view,
11 frankly, that because, A, they're a party to the motion,
12 okay, and they're a party to an agreement that is before the
13 Court, as opposed to an unsuccessful bidder on which the
14 case law, we agree, is legion, that there's a distinction in
15 this instance with respect to the stalking horse bidder in
16 this case.

17 So not to steal Mr. Wielebinski's thunder, but
18 that was -- that's our view of the case law and I don't know
19 if it's something contrary to that.

20 MR. CARROLL: Your Honor, I don't believe the
21 bidder is a party to the motion. The motion on the first
22 page says the debtors' motion, but more precisely, the
23 standing issue is not satisfied because they have entered
24 into a contract with the pre-petition debtor that has not
25 been approved by this Court. That doesn't change their lack

1 of standing.

2 THE COURT: All right. I will go ahead and
3 terminate the examination of Mr. Tully at this juncture, so
4 you can go ahead and step down.

5 MR. TULLY: Thank you, Your Honor.

6 THE COURT: I think we've learned from Mr. Tully
7 what he can add to the equation this afternoon.

8 All right. Other than the overflow pass that
9 Mr. Kuntzman will have on the sale motion, Mr. Grillo, was
10 there any other witnesses that the debtor wanted to present?

11 MR. GRILLO: In connection --

12 THE COURT: And I take it he's here?

13 MR. GRILLO: Mr. Kuntzman is back there, Your
14 Honor. I'm going to apologize for not introducing him
15 before the hearing.

16 Mr. Kuntzman is here. I don't think we have
17 either factual witnesses on the sale unless Your Honor
18 wanted more -- and I don't think this is the case -- but if
19 Your Honor wanted more specific testimony on how the working
20 capital adjustment works, we also in the courtroom with us
21 Mr. Barbieri from Richter Consulting who could, if not
22 necessarily provide testimony, also to answer some of the
23 more specific questions with regard to the working capital
24 adjustment.

25 But as it respects the sale and the procedures

1 motion, we would have Mr. Kuntzman and that would be it, and
2 then, obviously, also have the DIP motion, but it depends on
3 where we get on that.

4 THE COURT: All right.

5 Then let's do this, let's take about a 15-minute
6 recess. I want to work until about 1:30 and then I'll break
7 you all. I have a first-day hearing in another case coming
8 in at 2:00, which will hopefully occupy less of the
9 courtroom itself so there will be room for you all to come
10 back, but that would give you all a chance to talk some more
11 and grab something to eat.

12 So we'll resume at 12:45.

13 Just one reflection from the Court. It seems like
14 the issues which divide you at the moment are far less
15 substantial than the issues which unite you at the moment.
16 From the testimony and argument, it appears that there's a
17 disagreement over some extension of the window of time that
18 the debtor originally asked the Court to work within. I'm
19 not hearing the committee. We'll set Mr. Richards aside for
20 the moment, but I'm not hearing from the committee or from
21 the testimony, an elongated period of weeks or even a month.
22 It sounds like you all are talking in the numbers of days
23 between when the bidding would close, from the current
24 proposed deadline, and when the Court would have an auction
25 sale hearing.

1 The break-up fee is independent of that. The
2 Court will simply set that.

3 But in terms of the timing mechanic, if you all
4 want to have a further discussion, again, I'll -- I'm sure
5 I'm missing something, but what I've heard over the past two
6 hours or so, the gap between the you want it yesterday and
7 he wants it next week is not that substantial. So if you
8 all will visit on that and then we'll resume at 12:45 with
9 Mr. Kuntzman.

10 We'll go off the record.

11 THE CLERK: All rise, please.

12 (Recess at 12:33 p.m.)

13 MR. CARROLL: Your Honor, we may have Mr. Tully on
14 as well for today.

15 THE COURT: All right. So we'll adjourn on
16 Personal Communications Devices until 2:45 and we'll see you
17 all back at that time.

18 MR. CARROLL: Thank you, Your Honor.

19 (Recess at 12:51 p.m.)

20 THE COURT: We're back on the record now on 13-
21 74303, Personal Communications Devices, LLC.

22 Mr. Grillo?

23 MR. GRILLO: Yes, thank you, Your Honor.

24 Again, Emanuel Grillo of Goodwin Procter, proposed
25 counsel for the debtors and debtors in possession.

1 Your Honor, we had two motions as Your Honor knows
2 that were carried over to this afternoon's session, both the
3 sales procedures and the bid protection is one. The other
4 is the DIP loan. What we'd like to do, Your Honor, is
5 address the DIP loan because we have an agreement, I think,
6 with the parties.

7 Mr. Glerum insisted that he be the one to put it
8 on the record, so I'd like to yield the podium to
9 Mr. Glerum.

10 MR. GLERUM: Thank you. Insist might be a bit of
11 an overstatement, but since Mr. Grillo and -- I'm Charlie
12 Glerum, Your Honor, for J.P. Morgan Chase from Edwards
13 Wildman.

14 Since other counsel had spent most of the day
15 talking, I thought that perhaps we would give them a rest
16 and I would report the deal on the DIP agreement. You --
17 there were -- as you might have noted, a number of
18 objections. We have resolved all of those objections and
19 the objections will be withdrawn pursuant to our agreement
20 on what I hope I get right as the following points.

21 There will be a rollup. The DIP collateral will
22 not extend to collateral in which the agent did not have a
23 lien pre-petition. So to the extent that the agent's pre-
24 petition lien in receivables and inventory was perfected and
25 enforceable and valid, it will extend to after -- to

1 properties of similar -- acquired after the petition which
2 will be the DIP collateral.

3 To the extent that we didn't have avoidance
4 actions, we will not have avoidance actions.

5 To the extent that we didn't have tort claims or a
6 particular tort claim or a right to tort claims, we won't
7 have a right to tort claims, similar with insurance
8 proceeds.

9 But to the extent that our lien was what we have
10 been saying it was, we will have a DIP lien in that as well.

11 There was a -- some objections with respect to the
12 carve out and to professional fees. Professional fees as
13 they are incurred, but unpaid and unallowed during a case, a
14 sum to that extent will be put into an account in cash. It
15 will be a borrowing. Interest will be paid on it.

16 And in the event that we call a termination event,
17 that money in that account will not be swept, but will
18 remain available to the extent this Court allows the fees
19 that are requested. At present, this would include the fees
20 of counsel for the committee, itself financial advisor,
21 counsel for the debtor and its financial advisor, and indeed
22 there could be other new professionals who are added, but
23 that would be that group for this purpose.

24 The \$250,000 carve out will be available for post-
25 termination costs for those professionals. That number will

1 be capped. It will not be capped as it is currently not
2 capped with respect to the Office of the United States
3 Trustee and those fees.

4 As currently provided in the interim order, the
5 final order will also provide that when we are paid in full,
6 any obligation to carve out will go away because we will be
7 paid and gone. The agreement presently provides that in the
8 case of a termination, they have, I think, seven days to
9 come in to Your Honor and complain that the termination was
10 inappropriate or some similar belief. We have extended that
11 from three days to ten days.

12 I had been asked to note that paragraph 24 of the
13 final order is only intended to ensure my client's payment
14 in full from the proceeds of any buyer, whether it be the
15 stalking horse or another buyer, directly at the closing.
16 That's all it's intended to do. It's not intended to allow
17 us to have any other control over who the buyer is. Simply,
18 whoever the buyer is has to pay us off in full, directly, at
19 closing or that person is not going to be the buyer.

20 Did I leave anything else out?

21 MR. EISENBERG: One minor item -- well, maybe
22 minor from your perspective, but certainly major from our
23 perspective.

24 This is Gary Eisenberg from Perkins Coie on behalf
25 of the committee. The debtor has agreed to increase the

1 budget for professional fees from what currently was
2 submitted in an amount of \$300,000. I think they're making
3 various line item adjustments. That increase in the budget
4 of the period through October 25th, the anticipated sale
5 date is going to be part of this, so that that sum that will
6 be subject to the reserving arrangement that Mr. Glerum had
7 described previously.

8 So with that, then that amount of money, to the
9 extent that on we base it -- it's accrued by professionals
10 and a termination event occurs, it's based on that increased
11 number. That would be the cut off in terms of approved and
12 allowed professional fees.

13 MR. GLERUM: To be clear, it's not an increase in
14 the overall aggregate amount of the budget, but rather we
15 were (indiscernible - 2:59:47) of some of the items based on
16 what we've been able to determine within the first few weeks
17 of the case. We can make adjustments to certain line items
18 to accommodate the requests of the committee as far as that
19 goes.

20 THE COURT: But in terms of an aggregate cap for
21 pre-closing -- or pre-termination event fees --

22 MR. GLERUM: It's the same.

23 THE COURT: -- it's still -- it's still the same
24 amount?

25 MR. GLERUM: The fee line item -- if you look at

1 the budget.

2 THE COURT: Two-and-a-quarter, was it not?

3 MR. GLERUM: Two and a half. It's two and a half;
4 it's 2525. That line item would go up by \$300,000 to 2.8 --

5 THE COURT: Two five.

6 MR. GLERUM: 2.825.

7 THE COURT: Uh-huh.

8 MR. GLERUM: And then we have, based on sort of
9 where we've been thus far in the case, we can pull that from
10 other line items and adjust it, again, without increasing
11 the aggregate amount of the budget.

12 THE COURT: All right.

13 MR. GRILLO: And absent those changes, the order
14 will be as previously submitted.

15 THE COURT: This all -- this all relates to --
16 JPMC is agent for the first. Are there any changes that you
17 made with respect to the second?

18 MR. GRILLO: I'm going to get to that, Your Honor,
19 if I may?

20 THE COURT: Sure.

21 MR. GRILLO: We had asked for -- we had asked for
22 -- well, nobody had asked -- there was a request made, filed
23 with the committee with respect to a lien change deadline
24 that is still being examined by the committee -- by the
25 junior lenders

1 THE COURT: This is -- we're in and out done with
2 the JPMC issues and we've moving on to the second?

3 MR. GRILLO: Correct, Your Honor. Yes.

4 THE COURT: So the challenge date that was in the
5 proposed final order that's reflected in the interim order
6 as to the first liens remains the same?

7 MR. EISENBERG: That would remain the same, Your
8 Honor.

9 THE COURT: All right. So now let's focus on the
10 second lien issues.

11 MR. SALZBERG: Your Honor, this is Mark Salzberg
12 on behalf of PineBridge.

13 Counsel had made a request that we agree -- I
14 think "we" being the collective second lien lenders to a 75-
15 day investigation period that would not be stopped -- would
16 not have the earlier of language, so it would be a straight
17 75 days from the date the committee is formed.

18 Our concern with that, Your Honor, is the fact
19 that sale hearing will occur, the sale will be approved and
20 then the committee would, if the committee chooses, seeks to
21 unwind or to disallow PineBridge's claim, but the
22 transaction, as it's presently contemplated, as it's
23 formulated, would provide PineBridge with a note security
24 agreement guarantee and I think that what the committee is
25 then saying is that they would then want to unwind that

1 transaction.

2 It seems to us that if there is a sale that's
3 approved and one of the terms of the sale is notes,
4 guarantees, security agreements being executed in favor of
5 PineBridge, the issue of the lien validity or whatever other
6 challenge they want to assert, should be asserted
7 beforehand. So we're not willing -- we're not oh this was
8 just suggested to us about a half hour ago. We're not at
9 the present time of agreeing to a straightforward 75-day
10 investigation period ruling out the earlier language.

11 MR. GRILLO: Can I respond to that real quick,
12 Your Honor? I think --

13 THE COURT: Are there -- just before we go to
14 other points, there was some issue expressed by the
15 committee about concerns about what were essentially
16 adequate protections to the second lien lenders, even though
17 they're really not moving. Whatever rights they have, they
18 have. They're not advancing money. Their, theoretically,
19 their cash collateral may be they utilize, but it's all
20 subsumed under what's happening in the first with the
21 rollup.

22 So are there any language changes being proposed
23 as to how -- the order was purported to provide adequate
24 protection to the seconds.

25 MR. SALZBERG: Your Honor, paragraphs 15(a) and

1 15(b) address that, and I've spoken with counsel for the
2 committee and I believe the language in those provisions
3 already makes it clear that the only way that we're getting
4 adequate protection is if there's a diminution of the value
5 of our collateral, which presupposes we have a secure -- we
6 have a lien. Counsel suggests that may be we put the word
7 "solely" in there. I don't think that's necessary, but we
8 would be willing to do that.

9 MR. EISENBERG: I think we would agree with that.
10 I think one thing, just to make a slight clarification to
11 what counsel for the first lien holders indicated, he
12 indicated that to the extent that they didn't have a lien
13 pre-petition, I think the actual language would be a
14 defective lien, and I think that is what was assumed, but I
15 just want to make sure that it's clear for the record.

16 THE COURT: It's the big three, right, valid,
17 perfected and enforceable?

18 MR. EISENBERG: Exactly. And that would apply
19 with respect to the second lien lenders, Your Honor.

20 THE COURT: All right. So then are we left to the
21 challenge period issue on second?

22 MR. SALZBERG: I believe so, with respect to
23 PineBridge, Your Honor.

24 THE COURT: All right. Mr. Eisenberg, I'm not
25 sure how much of this is academic. If the stalking horse is

1 the successful bidder, they're not delivering cash money,
2 they're delivering notes and paper, but where's the
3 committee on that? Essentially, the way it's being posed is
4 to truncate the challenge period such that a pre-closing
5 challenge would have to be brought to the second position.

6 MR. EISENBERG: Right. And frankly, Your Honor,
7 we find that difficult for the following reason. We think
8 that as a practical matter, it's much more likely to be an
9 issue that we may raise with respect to the seconds and
10 therefore the need for an investigation and a look at
11 period, so that's why we sought the extra time with respect
12 to the seconds as opposed to the firsts.

13 I think we (indiscernible - 3:05:21) overall, but
14 it was likely, you know, without waiving our rights to come
15 back and address the first time, we didn't see it as big a
16 problem. That's why the 60-day period as the first position
17 was not really a concern to us.

18 The second thing -- position where we do have some
19 concerns, it's a lot of activity early in the case, Your
20 Honor, and if we're forced to come in and rush to file an
21 adversary proceeding, when we may not have necessarily
22 investigated everything earlier on, we're at a stalemate,
23 curved, you know, fewer than 60 days into the case, that
24 does put a tight (indiscernible - 3:05:53) and frankly, I
25 think we would suggest that, you know, the fact that the

1 second lien lender does a deal with the stalking horse
2 shouldn't be a reason why they are entitled to deviate from
3 the ordinary guidelines that are in effect in the district
4 that says that 60 days is the period that would run and
5 that's usually not subject to a shortened period if there
6 was simply a sale that occurs earlier.

7 MR. SALZBERG: Your Honor, what we're talking
8 about here -- there's a 15-day -- I believe a 15-day
9 extension. If the committee wants to take discovery and
10 they've been involved -- I mean we will agree to expedite
11 the discovery. If they want documents, we'll get the
12 documents, but we believe that this issue and any sort of
13 challenge should be asserted before the sale. It shouldn't
14 be that the sale was done. The sale was approved, and the
15 sale was free and clear and then suddenly the challenge is
16 asserted.

17 THE COURT: You're not suggesting before the sale
18 hearing?

19 MR. SALZBERG: In the sale hearing, I'm sorry, the
20 sale hearing.

21 The way it's structured right now, is the
22 challenge period would end at the earlier of the latter of
23 60 days from the appointment of the committee or the date
24 before the sale hearing. That's how it's presently
25 formulated.

1 THE COURT: All right. And when we shift over to
2 the big procedures motion, is there any adjustment being
3 made to the sale hearing date or is it contemplated that
4 that would stay?

5 MR. GRILLO: Not the sale date -- not the sale
6 date, Your Honor. The auction -- the auction itself we have
7 agreement on, an extension of the auction and the big
8 deadline --

9 THE CLERK: Stand next to the microphone.

10 MR. GRILLO: I'm sorry.

11 Again, Your Honor, with respect to the sale
12 hearing date, I believe we have agreement, and subject to
13 making sure the other pieces all fit and I think we're
14 there. But I think we have agreed that I'm keeping the
15 hearing date on October 10th. We're talking about pushing
16 back the auction and the bid deadline from its current dates
17 so we'll push that back, but we're not talking about moving
18 the hearing date.

19 THE COURT: Mr. Dimino, your office -- only this
20 is on the timing mechanic.

21 MR. DIMINO: Judge, I'm a little confused.

22 Which timing mechanic is still open, that we were
23 just discussing? In terms of the sale, we have no -- the
24 big procedure and when the auction is, we have no objection.

25 THE COURT: It seems the current issue is should

1 the committee be put to -- or any other party in interest --
2 be put to filing an objection to the second lien position
3 before either the sale hearing or the sale closing, either
4 of which could be less than 60 days from committing
5 formation?

6 MR. DIMINO: Judge, the complication in that --
7 and I'll get to that as I see it is -- if the time extended
8 beyond the sale hearing and the stalking horse bidder is the
9 successful bidder, the pre-petition, second position list of
10 creditors have entered into an agreement where there will be
11 a post-sale continuation of their position. Actually, it
12 will be elevated to a first position.

13 If the committee was successful in challenging
14 their secured petition post-sale, then the only option would
15 be, I presume, that estate would then stand in the shoes of
16 the secured creditors' position because you can't unwind
17 that without then unwinding the sale.

18 So if the committee is saying that's what they' oh
19 if they were successful, that's what they would see happen,
20 I assume we can extend it.

21 If they're saying that it would undo the sale
22 itself, which I don't know that they could, so I'm assuming
23 that you would end up taking back the position of the
24 secured creditor.

25 THE COURT: It would seem that it's --

1 MR. DIMINO: In that case, I don't know that it
2 matters that you would go beyond the sale date.

3 THE COURT: Well, it would seem to the Court that
4 if we, the royal we, don't know if there's going to be a
5 cash buyer come in to this equation.

6 MR. DIMINO: Right.

7 THE COURT: That's part of what's brought 30 of
8 you all here this afternoon, and so, if there's a cash
9 buyer, it's a completely different dynamic. The sale -- the
10 first lien holder, absent timely challenged, is going to be
11 paid at the closing.

12 The second lien lender, absent timely challenged,
13 it's a sale free and clear. There's no requirement that the
14 second lien funds be dispersed at the closing unless I
15 require that, and I wouldn't want to let an expedited sales
16 process truncate a reasonable objection period.

17 MR. SALZBERG: It appears that whichever the
18 scenario, if I understand how the committee envisions this,
19 in either scenario, if there is a third party that comes in
20 and it's a successful bidder, there'll be cash. That cash,
21 if it pays off the second position, they may be liable to
22 bring that money back in, if the credit committee is
23 successful.

24 If the stalking horse bidder is successful and it
25 turns out that that second position is not an effective or

1 not a secured position or avoidable secured position, then
2 it appears that the estate would then step into the shoes
3 and it wouldn't matter if the action took place before or
4 after the sale.

5 So I think that under either scenario, if you were
6 to extend the time beyond the sale hearing, I believe that
7 there's no impediment to complete the sale process.

8 MR. GRILLO: Your Honor, I can make it simpler
9 than that, actually, if I may, Your Honor?

10 I think what Mr. Dimino is exactly right. In
11 other words, we don't need to hold up the sale depending on
12 what Your Honor wants to do with the challenge period
13 because of the following ways, there's two forms of
14 consideration. Either there's cash and if the reserve
15 periods are there, a certain amount of it can be reserved or
16 all of it can be reserved depending on, you know, until we
17 get to the end of the period, if there's a successful
18 bidder, bidding cash.

19 If it's the existing bid, then we know that both
20 parties are just getting notes. The Court can very easily,
21 has authority over all of the parties, if it were to find
22 that those liens were not valid, then it can have the notes
23 recast for the benefit of the estate, as opposed to, you
24 know, the secured creditors.

25 I think there's a simple solution to that problem

1 either way because under any circumstances, the estate was
2 only going to get -- where it goes to the secured creditors
3 or otherwise -- the proceeds of the sale. The liens would
4 attach to the proceeds. If the proceeds are a note, then
5 the proceeds are a note and the person's getting that gets
6 it made out to the estate. If it's cash, then cash is
7 obviously easier to move, so I don't think it's that
8 complicated at the end of the day.

9 MR. EISENBERG: I would tend to concur, Your
10 Honor. I mean the disposition on what is received after the
11 sale is available to be attached and garnered for the
12 benefit of the committee and for the estate to the extent
13 that there's a successful challenge to the liens. The fact
14 that a second lien creditor takes a note instead of cash,
15 the cash could be redirected if the Court held up approving
16 the dissemination of the cash to the second lien lender.
17 Payments to be made under the note can simply be redirected.
18 I don't think it's that complicated of a problem.

19 The length of the sale, I think, is an artificial
20 one. To the extent that the committee is going to resolve
21 objections with respect to the timing on the sale, we
22 shouldn't be prejudiced from bringing a challenge to need,
23 simply because rather than taking cash, the second lien
24 lender decided to take a note. That shouldn't be a way of
25 truncating the challenge.

1 THE COURT: It would seem to the Court that the
2 challenge date, whether it's for the committee or other
3 parties in interest, should in this case be 60 days from
4 formation of the committee, which appears to be October 24.
5 There's been a lot of initial activity in the case. Some of
6 that will continue with ferreting out potential purchasers,
7 et cetera, but it would seem to the Court that 60 days from
8 committing formation of this case would be appropriate.

9 The post-sale hearing may be around the date of
10 the sale closing, but, again, the sale hearing date and the
11 sale closing date shouldn't necessarily drive the challenge
12 date, at least on the second liens. So I'll fix that to
13 October 24th, which is 60 days from the formation of the
14 committee.

15 That doesn't mean that you would all have to wait
16 until then if you think you have enough to bring a lawsuit,
17 but, you know, people are driven by deadlines.

18 MR. SALZBERG: Your Honor, so Your Honor is fixing
19 the challenge for the second lien lenders to expire on
20 October 24th.

21 THE COURT: Correct.

22 MR. GOLDBERG: Your Honor, for the record, Adam
23 Goldberg of Latham and Watkins on behalf of DLJ as a second
24 lien lender.

25 That resolution is acceptable to us. I just

1 wanted to note for the record, that of course, the issue of
2 unrolling the sale will come before the Court, but we
3 reserve all of our rights with respect to how it could be
4 unwound in the future.

5 THE COURT: Thank you.

6 MR. GOLDBERG: Thank you.

7 THE COURT: So what else do we have, as dangerous
8 as that is, if anything, on the -- I hate to ask what else
9 you haven't agreed to in a 65-page document, but are we
10 otherwise done on the DIP?

11 MR. GRILLO: I --

12 THE COURT: The DIP?

13 MR. GRILLO: I'm sorry, Your Honor.

14 THE COURT: I recognize you may move some
15 semicolons and dependent clauses and things like that.

16 MR. GRILLO: Your Honor, if I may?

17 The DIP in a 65-page DIP order, I think we have an
18 agreement as to how it will be fixed, so we can take that
19 back and figure that out amongst the people who are here.

20 With respect to the bid procedures, there's still
21 one or two open points that, if Your Honor will indulge us
22 one more time for ten minutes, we'll try to resolve -- we're
23 just trying to coordinate communications back and forth with
24 clients. We just need to sort of touch base one more time.

25 But we did have the DIP done, so we wanted to

1 report back on that.

2 THE COURT: All right. So then on the -- I'll go
3 ahead and break you. I'll then finish discussions on the
4 DIP procedures.

5 On the DIP, as quickly as you all can, send me an
6 approved as to form revised version. If there are some
7 minor languaging issues that you all can't agree to, just
8 reflect that in the body of the document and I'll reconcile
9 the differences in chambers, but we'll otherwise be in
10 recess until 3:30?

11 MR. GRILLO: That would be perfect, Your Honor.
12 3:30 would be great.

13 THE COURT: I know this is all being measured by
14 when does traffic start building up on the LIE, so take your
15 time.

16 (Laughter)

17 THE CLERK: All rise.

18 (Recess at 3:16 p.m.)

19 THE COURT: Thank you, please be seated.

20 We'll go back on the record in Personal
21 Communications Devices.

22 Mr. Grillo?

23 MR. GRILLO: Yes, thank you, Your Honor.

24 Again, Emanuel Grillo, on behalf of the debtors.

25 Your Honor, I think -- I'm crossing my fingers --

1 I believe we have a deal on the DIP procedures and the
2 break-up fee and the remaining points that would allow the
3 motion to go forward.

4 THE COURT: All right.

5 MR. GRILLO: Simply stated -- and I'll take them
6 in parts if I may, starting with the dates.

7 The proposed hearing date for the sale approval
8 hearing, working backwards, of October 10th, would remain in
9 place. Bids would be due on October 8th and an auction, if
10 necessary, would be held on October 9th.

11 With respect to the break-up fee, and the expense
12 reimbursement, I am describing those together in the
13 aggregate, Your Honor. So there is an aggregate amount of
14 \$4.5 million -- I got it, I just wanted to make sure it got
15 it right -- \$4.5 million dollars.

16 Of that \$4.5 million dollars, and this will tie
17 back to the sale of the -- to the actual contract terms of
18 the seconds, so if Your Honor indulges me to go through in
19 full detail. To the extent that the break-up fee is due and
20 payable to Quality One, on account of the bid, then there
21 will be a sharing formula in place between Quality One and
22 the estate and Quality One will agree to contribute back
23 \$750,000 of the break-up fee when paid.

24 The flipside of that, Your Honor, is if it's not
25 paid because Quality One is the successful bidder, and in

1 those circumstances, if Your Honor recalls, there is a
2 working capital adjustment that we discussed earlier that
3 had a collar on it of \$7.5 million dollars. So the base
4 note for PineBridge is set at 25 and there's a collar of
5 \$7.5 million either way.

6 If the working capital adjustment comes in above
7 the collar -- so without changing any of the amounts paid to
8 either the junior secured creditors -- but if it comes in
9 above that number, then for the first -- on a dollar for
10 dollar basis, above that \$7.5 million dollars, the
11 purchaser, again, assuming it's Quality One, will agree to
12 contribute back to the estate one dollar for each dollar
13 that it's over to a cap of \$750,000. So it's the same
14 number as in connection with the break-up fee.

15 So in the event that the break-up fee is approved
16 by Your Honor and payable, the break-up fee and the expense
17 reimbursement, the aggregate amount of \$4.5 million, they
18 will receive back -- they will contribute back to the estate
19 \$750,000.

20 If on the other hand they become the successful
21 bidder and the working capital adjustment is above the \$7.5
22 million dollars based on the formula set forth in the APA,
23 for each dollar over that up to a cap of \$750,000, Quality
24 One will contribute that back in the form of a note
25 consistent with the terms of the PineBridge notes. So it

1 will be the same form of consideration as the other notes.

2 It's an unsecured note.

3 THE COURT: All right.

4 MR. GRILLO: I believe that's the agreement. I'm
5 going to -- I keep looking over my shoulder each time that
6 one confirms up on that, Your Honor.

7 THE COURT: In terms of --

8 MR. GRILLO: The executory contract, yes.

9 Thank you, yes. Mr. Carroll reminded me.

10 Executory contracts are due, October 3rd,
11 Thursday, at 5:00 p.m.

12 THE COURT: That's the to be assumed list?

13 MR. GRILLO: Yes, that's correct.

14 THE COURT: All right.

15 MR. GRILLO: Right. So that's, Your Honor, just
16 to sort of tie the whole timeline together. That's -- so
17 what that will do is that will give several days to
18 perspective bidders to take a look at the contracts that
19 have been identified by Quality One for purposes of the bid
20 so we can applize (ph) the bid so to speak, you know, if
21 somebody else were to submit one three or four days later.

22 THE COURT: I'm going to -- in terms of the
23 initial overbid and then the bid increments?

24 MR. GRILLO: Yes, we have bid -- the increment,
25 for the initial overbid and each bid thereafter are each

1 \$50,000 increments.

2 THE COURT: So then the initial overbid is a
3 million nine fifty -- what would be the first competitive
4 bid \$109,050,000?

5 MR. GRILLO: It's four million five plus fifty,
6 right.

7 And Your Honor, depending on the activity --
8 there's a discussion going on about, you know, whether
9 that's an appropriate number under the circumstances. We've
10 been in auctions where we've increased it, you know, because
11 everyone is bidding up, you know, quickly. We would
12 maintain the flexibility of working with the committee that
13 if we do have a robust auction, we would increase the bid
14 increments, but we wanted to make certain that the amounts
15 are at least \$50,000, but not more than -- at least to start
16 and then we'll see what we get at the auction.

17 THE COURT: Then as far as the data room and the
18 committee involvement, I take it the data room is either
19 done or will be done?

20 MR. GRILLO: It is. It's been done, Your Honor.
21 We'll make sure that everybody has access.

22 I spoke to Mr. Catalanello and make sure that his
23 client gets access. We'll have that lined up for today. We
24 will make sure that everybody else, anyone who's interested
25 will be in there. It's been updated. All the materials are

1 in there.

2 Here are some of the other issues that have been
3 raised. Inventory isn't scheduled. It's on the existing
4 bid as it stands now. The issue of the ROFOR (ph) that was
5 raised, just -- I can address that real quickly, too. I
6 mean we didn't -- sort of peace broke out, so I didn't get
7 to do my closing -- but the bottom line is that what that
8 was designed to do was that was to cover sales before the
9 auction sale.

10 So what it was designed to do is to prevent either
11 the company or the lenders from forcing the liquidation of
12 inventory that was to be sold at below market value. So it
13 was to protect the value of the assets going into the
14 auction. It wasn't to give Quality One, frankly, some sort
15 of untort advantage, but we do have inventory that, you
16 know, with respect to its value, it varies and you really
17 need a skilled set of people to try and maximize that. What
18 they didn't want to have happen was they wanted the business
19 to continue operating in the ordinary course and the way to
20 do that, because primarily what we do at this point is sell
21 inventory, is to make sure that it wasn't sold below certain
22 floors and if it was going to be sold between now and the
23 sale, there's no intention to do so, but if we were forced
24 do, for some unknown reason, that they would have the right
25 to come in and buy that in the interim. So it was really

1 just to preserve the existing value of the business as it
2 stood right now. That was my last point on that.

3 THE COURT: The provisions of the proposed bid
4 procedures say in sole discretion of the debtor or in the
5 business judgment of the debtor. Those will all become
6 consultation with the committee and in the event of a
7 disagreement to be determined by the Court?

8 MR. GRILLO: Sure.

9 Your Honor, the question's being raised that of
10 the \$4.5 million dollars, you know, that becomes subject to
11 that sharing formula, but of that \$4.5 or net \$3.75, but a
12 million dollars of that is designated as expense
13 reimbursement, versus break-up fee.

14 So the aggregate doesn't change from what I told
15 Your Honor, it's just a division between the two numbers.
16 That was the request from Mr. Wielebinski.

17 And counsel for PineBridge wanted me to confirm,
18 which I will, that we are not changing any of the
19 consideration under the proposed deal by virtue of this
20 working capital adjustment payment to the estate, that it
21 was not affecting their deal and that is correct, it is not
22 affecting their deal.

23 THE COURT: That just addresses that gap above
24 that seven and a half, that's otherwise already in the
25 contract.

1 MR. GRILLO: Yeah, that, otherwise, would have
2 gone to Quality One, that's correct.

3 THE COURT: So, do you want to address that fix in
4 the form of the order or are you going to modify the sale
5 agreement so the other purchasers --

6 MR. GRILLO: I think we have to modify the sale
7 agreement because I know that (indiscernible - 3:48:15) and
8 capital judgment comes up there. I don't think, without
9 looking at it, that there's a particular provision in the
10 order that's affected.

11 But the sale agreement, we have to address,
12 repost. We obviously need to make changes to the order.
13 What we'd like to do, Your Honor, is get preliminary
14 approval from Your Honor, subject to an order, as with the
15 DIP that we all agree upon, and we will all work hard to
16 submit that as soon as possible to the Court.

17 THE COURT: All right. Well, let's go ahead and
18 get our series of "oh yeses" on the record.

19 MR. GRILLO: I guess I'll step back.

20 THE COURT: So we'll start with the guy with the
21 money.

22 MR. WIELEBINSKI: Your Honor, I think Mr. Grillo
23 outlined what we agreed to correctly. I think the only part
24 I might want to clarify is it is payment from the buyer
25 protections when paid and if paid, we just want to make sure

1 that, you know, the obligation arises when we get the cash
2 and we will be happy to pay out what we agreed. That's the
3 only clarification.

4 THE COURT: Or let's just string it so it doesn't
5 flow through the buyer. Mechanically either way is fine, as
6 long as the at the end of the day -- if, at the end of the
7 day, Quality One winds up not being the successful bidder,
8 they walk away with \$3.750 million and the estate has got
9 \$750,000 just out of the buyer protection side.

10 However, that's all mechanic language that I'll
11 leave to you all, but that's the end of the day part.

12 As far as the morning start of the discussion
13 about the finance and contingency, does that stay in the
14 contract as written or is that being modified out?

15 MR. WIELEBINSKI: I was really hoping that you had
16 forgotten about that, Your Honor.

17 (Laughter)

18 THE COURT: As Judge Hale would have said, I have
19 a long memory for the shortcomings of others.

20 (Laughter)

21 MR. WIELEBINSKI: You know I'm going to pass that
22 on to him, Judge.

23 I think where we are is the parties have continued
24 to work on it this afternoon and I don't have anything that
25 says we have the signed agreement. I think what we're going

1 to do is continue to work on it and get it done before we
2 submit the order to you and I think that's the appropriate
3 way to handle it.

4 I don't see it as a waiver of the condition. I
5 think it becomes a -- essentially, it's been satisfied by
6 the parties coming to an agreement.

7 MR. GRILLO: Yes, we were not submitting an order
8 unless we had that issue wrapped up.

9 THE COURT: All right.

10 Mr. Carroll?

11 MR. CARROLL: Yes, Your Honor.

12 First, let me thank you for your assistance this
13 morning. I don't think we ever would have gotten to this
14 point without your assistance and your time.

15 And as Mr. Grillo and Mr. Wielebinski have played
16 out, that is the deal that we have agreed to.

17 THE COURT: All right. Thank you.

18 From the -- yes?

19 MR. CATALANELLO: For the record, Gerard
20 Catalanello from the law firm of Duane Morris. On behalf of
21 Mr. Christopher, we agree with the resolutions placed on the
22 record today. Thank you.

23 THE COURT: All right. Then as far as KPMC and
24 then the seconds?

25 MR. CARROLL: Your Honor, they last once the

1 (indiscernible - 3:51:30).

2 UNIDENTIFIED MALE SPEAKER: Oh, he's here again.

3 (Laughter)

4 MR. GLERUM: We thought you said seconds, I'm
5 sorry.

6 (Laughter)

7 These changes are fine with us. I mean you guys gotta
8 get your creditor agreement done, however, real fast. That
9 would be today, otherwise, I've got issues.

10 THE COURT: All right.

11 From the seconds?

12 MR. SALZBERG: I'm not sure how to follow that.

13 Your Honor, Mark Salzberg, on behalf of
14 PineBridge. The changes, most of them don't really impact
15 us. We were not involved in the discussions. They're fine
16 with us.

17 We're endeavoring to finish the underlying
18 documentation. You referenced the contingencies and the
19 sale in the DIP order and counsel's correct, that the
20 parties are discussing and we hope that we'll be able to
21 reach a financial resolution.

22 MR. GOLDBERG: Your Honor, for the record, I'm
23 Adam Goldberg of Latham & Watkins, on behalf of DLJ
24 Investment Partners. We, likewise, have no issues with the
25 changes that have been resolved.

1 If I may take two minutes of the Court's time, I
2 would like to address one point. In the committee's
3 objections to the bidding procedures, that is particular to
4 DLJ, I'm happy to do that, now or at any other time if the
5 Court would entertain it.

6 THE COURT: Go ahead.

7 MR. GOLDBERG: Thank you, Your Honor.

8 The -- we're very conscious that the committee was
9 very recently formed and is -- will conduct its
10 investigation of the pre-petition capital structure and
11 transactions of the debtors that occurred before the
12 petition date.

13 The committee argued in their objection that DLJ,
14 like PineBridge, is an insider of the debtors. We just want
15 to take a moment to point out, Your Honor, that the
16 committee's arguments are just that, arguments. The
17 committee has thus far submitted no evidence for suggest
18 that DLJ is an insider.

19 In fact, DLJ is independent from PineBridge and
20 has a distinct relationship with the debtors. In
21 particular, unlike PineBridge, DLJ has no voting Board
22 members, only observer status; whereas, PineBridge has the
23 majority of the voting stock in the debtors. DLJ has less
24 than 10 percent of the voting stock.

25 And the committee has shown no evidence of any

1 other control exerted by DLJ over the debtors.

2 While PineBridge and DLJ are both party to the
3 same second lender creditor agreement, that creditor
4 agreement reflects the different relationships that
5 PineBridge and DLJ have with the debtors. In particular,
6 DLJ is entitled to payment priority for its loans over the
7 loans extended by PineBridge, and in addition, an agent has
8 been appointed to represent all of the lenders and DLJ,
9 alone, is entitled to direct that agent as required lenders
10 until its loans are paid in full.

11 That is to say, Your Honor, if evidence is ever
12 presented to the Court on DLJ status, it will though that
13 DLJ is not an insider.

14 THE COURT: When you say agent has been appointed
15 for all the lenders, you mean all, including the firsts or
16 all, just meaning all the seconds?

17 MR. GOLDBERG: It's only the second lien, Your
18 Honor. US Bank is the agent for the seeked lien lenders.

19 THE COURT: All right. Thank you.

20 MR. GOLDBERG: Thank you, Your Honor.

21 MR. CARROLL: Just very briefly, Your Honor. It's
22 not an issue for today. I think that Mr. Goldberg actually
23 made our point when he said they're observer status, their
24 voting rights, et cetera, but I don't think we need to argue
25 it today.

1 THE COURT: All right. Very well.

2 MR. GRILLO: Thank you for your time, Your Honor.

3 On behalf of everyone here, you've been more than
4 accommodating to all of us today.

5 We're going to take everyone back and get to work
6 on what we need to get done for the Court.

7 THE COURT: All right. So, again, first, I
8 appreciate you all got all of these worked out. I will
9 approve the bid procedures as modified on the record. They
10 do sound to the Court to be reasonable and appropriate in a
11 case of this nature.

12 Please go ahead and submit at your earliest
13 convenience, a revised agreed form of order. If there are
14 disagreements on language and clauses, semicolons, if you
15 can't reconcile those, submit them to me and I'll reconcile
16 them in chambers so we is can get the process afoot.

17 One last housekeeping matter, you noticed a series
18 of retention applications being filed yesterday. Nothing
19 outrageous about that.

20 Did you all intend to want to proceed by hearing
21 on those or simply by submission through the U.S. Trustee's
22 Office?

23 MR. GRILLO: Your Honor, we had the hearing date
24 of the 20th, was sort of held aside for that. So in the
25 event that there are objections, we would hope to resolve

1 them at a hearing on the 20th.

2 THE COURT: Mr. Dimino?

3 MR. DIMINO: Judge, I (indiscernible) this
4 afternoon. If counsel -- I had asked counsel for the
5 creditors to review those and advise me whether or not there
6 were any objections and any motions pending.

7 If there are no objections, then I just need
8 counsel for the debtor to e-mail me the order and I will
9 process them for the Court.

10 THE COURT: Mr. Carroll, I just wanted to make
11 sure that you're okay on the timing mechanic here.

12 MR. CARROLL: Yes, Your Honor.

13 We have -- I have asked one of my colleagues to
14 take a look at them and he's done that today. I'll consult
15 with him later today and get back to Mr. Dimino tomorrow at
16 the latest.

17 THE COURT: All right. So then by -- will you all
18 have other fish to fry -- but if you could all let the Court
19 know by Monday if there are any objections to the retention
20 applications so they can be added to the calendar, because
21 right now they're not.

22 MR. DIMINO: Judge, it was my intention that if there were
23 any objections that either my office or any counsel had,
24 that I would contact counsel and make sure the notice came
25 through.

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(Whereupon these proceedings were concluded at 3:57
P.M.)

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T E S T I M O N Y

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I N D E X

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C E R T I F I C A T I O N

I, William J. Garling, certify that the foregoing
transcript is a true and accurate record of the proceedings.

William
Garling

Digitally signed by William
Garling
DN: cn=William Garling, o, ou,
email=digital1@veritext.com,
c=US
Date: 2013.10.04 17:31:52 -04'00'

Veritext

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Mineola, NY 11501

Date: October 4, 2013